(30,636)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 671

CLYDE H. FINLEY, RECEIVER, AND CORONADO COAL COMPANY, DENMAN COAL COMPANY, ET AL., PLAINTIFFS IN ERROR,

vs.

UNITED MINE WORKERS OF AMERICA, P. R. STEWART, FRED HOLT, ET AL., ETC., ET AL.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1924, of said Court, before the Honorable Walter H. Sanborn, the Honorable Robert E. Lewis and the Honorable William S. Kenyon, Circuit Judges.

Attest:

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal of the United States Circuit Court of Appeals, Eighth Circuit.)

Be it Remembered that heretofore, to-wit on the thirtieth day of November, A. D. 1923, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the Western District of Arkansas, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Clyde H. Finley, Receiver, et al., were Plaintiffs in Error and the United Mine Workers of America, et al., were Defendants in Error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

Vol. 1

67

1 **Citation.**

United States of America,

To United Mine Workers of America, United Mine Workers of America, District No. 21, P. R. Stewart, Fred Holt, John P. White, as President of United Mine Workers of America, P. R. Stewart, as President of United Mine Workers of America of District No. 21, James Mullen, National Executive Board Member United Mine Workers of America, William McLaughlin, William McLaughlin, as President of United Mine Workers of America District No. 21, Tom King as Board member of United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, and Edward Cuningham, as President of District No. 21 United Mine Workers of America, Frank J. Hayes and Frank J. Hayes as Vice President of the United Mine Workers of America, William Green and William Green as Secreatry-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brooke, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendricks, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara, Pete McMullen, John Mastell, James Slankard, Local Union No. 340, United Mine Workers of America, Local Union No. 374, United Mine Workers of America, Local Union No. 560, United Mine Workers of America, Local Union No. 586, United Mine Workers of America, Local Union No. 1130, United Mine Workers of America, Local Union No. 1159, United Mine Workers of America, Local Union No. 1526, United Mine Workers of America, Local Union No. 1530, United Mine Workers of America, Local Union No. 1565, United Mine Workers of America, Local Union No. 1810, United Mine Workers of America, Local Union No. 1814, United Mine Workers of America, Local Union No. 1824, United Mine Workers of America, Local Union

No. 1842, United Mine Workers of America, Local Union No. 1912, United Mine Workers of America, Local Union No. 1934, United Mine Workers of America, Local Union No. 2027, United Mine Workers
2 of America, Local Union No. 2053, United Mine Workers of America, Local Union No. 2110, United Mine Workers of America, Local Union No. 2160, United Mine Workers of America, Local Union No. 2316, United Mine Workers of America, Local Union No. 2494, United Mine Workers of America, Local Union No. 2766, United Mine Workers of America, Local Union No. 2769, United Mine Workers of America, Local Union No. 2770, United Mine Workers of America, Local Union No. 2772, United Mine Workers of America, Local Union No. 2841, United Mine Workers of America, Local Union No. 2880, United Mine Workers of America, M. B. Appleby, Bruce Jordon, Whit Miller, Ed Baker, H. S. Treadway, G. G. Daniels, John Turnipseed, Lewis Evans, Joe Coneoda, B. Trout, Joe Assola, Joe Kervillas, Wm. Rodden, Chas. Blackburn, Joe Lanier, Albert Hunter, Rich Handlin, Scott Adkins, Frank Petty, Claud Litchford, John Litchford, Otto Alimen, Carey Crumpton, Wm. Price, Peter McMullen, Jr., John Murray, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren, Harry Kirkett, Willis Congo, Leslie Congo, Bud Congo, Chas. McGown, J. W. Howard, Bud Williams, (Col) John T. W. Davis, Brock Smith, (Col) Ed Kehee, and each and every defendant named in the third amended complaint and the amendments thereto,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to a writ of error, filed in the Clerk's office of the District Court of the United States for the Western District of Arkansas, wherein Clyde H. Finley, Receiver, and Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, each and all by Clyde H. Finley, their Receiver, are plaintiffs in error, and you are defendants
3 in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as

in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John C. Pollock, Judge of the District Court of the United States for the Western District of Arkansas, by assignment, this 3rd day of November, in the year of our Lord one thousand nine hundred and twenty-three.

JOHN C. POLLOCK,
Judge United States District Court for the Western District of Arkansas, by assignment.

The defendants in error, the defendants below, hereby accept service of the within citation, and waive service thereof by an officer, this 13 day of November, 1923.

HENRY WARRUM,
G. L. GRANT,
Counsel for Defendants in Error.

Filed Nov. 13, 1923, Wm. S. Wellshear, Clerk, By Irma Smith, Deputy Clerk.

---

4 Writ of Error.

(Filed in U. S. District Court November 5, 1923.)

United States of America:—ss.

The President of the United States of America, To the Honorable Judges of the District Court of the United States for the Western District of Arkansas,—Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, at the June Term, 1923, thereof, between Clyd H. Finley, Receiver, and Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Mining Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, each and all by Clyde H. Finley, Receiver, Plaintiffs, and United Mine Workers of America, P. R. Stewart, Fred Holt, John P. White, as President of United Mine Workers of America, United Mine Workers of Ameri-

ca, District No. 21, P. R. Stewart, as President of the United Mine Workers of America of District No. 21, James Mullen, National Executive Board member United Mine Workers of America, William McLaughlin, William McLaughlin, as President United Mine Workers of America of District No. 21, Tom King, Tom King, as Board member of United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, and Edward Cunningham as President of District No. 21, United Mine Work-
5 ers of America, Frank J. Hayes, and Frank J. Hayes, as Vice President of the United Mine Workers of America, William Green and William Green as Secretary-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brooke, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendricks, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara, Pete Mc Mullen, John Mastell, James Slankard, Local Union No. 340, United Mine Workers of America, Local Union No. 374, United Mine Workers of America, Local Union No. 560, United Mine Workers of America, Local Union No. 586, United Mine Workers of America, Local Union No. 1130, United Mine Workers of America, Local Union No. 1159, United Mine Workers of America, Local Union No. 1526, United Mine Workers of America, Local Union No. 1530, United Mine Workers of America, Local Union No. 1565, United Mine Workers of America, Local Union No. 1810, United Mine Workers of America, Local Union No. 1814, United Mine Workers of America, Local Union No. 1824, United Mine Workers of America, Local Union No. 1842, United Mine Workers of America, Local Union No. 1912, United Mine Workers of America, Local Union No. 1934, United Mine Workers of America, Local Union No. 2027, United Mine Workers of America, Local Union No. 2053, United Mine Workers of America, Local Union No. 2110, United Mine Workers of America, Local Union No. 2160, United Mine Workers of America, Local Union No. 2316, United Mine Workers of America, Local Union No. 2494, United Mine Workers of America, Local Union No. 2766, United Mine Workers of America, Local Union No. 2769, United Mine Workers of America, Local Union No. 2770, United Mine Workers of America, Local Union No. 2772, United Mine Workers of America, Local Union No.
6 2841, United [—] Workers of America, Local Union No. 2880, United Mine Workers of America, M. B. Appleby, Bruce Jordan, Whit Miller, Ed Baker, H. S. Treadway, G. G. Daniels, John Turnipseed, Lewis Evans, Joe Coneoda, B. Trout, Joe Assola, Joe Kervillas, Wm. Rodden,

Chas. Blackburn, Joe Lanier, Albert Hunter, Rich Handlin, Scott Adkins, Frank Petty, Claud Litchford, John Litchford, Otto Alimen, Carey Crumpton, Wm. Price, Peter McMullen, Jr., John Murray, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren Harry Birkett, Willis Congo, Leslie Congo, Bud Congo, Chas. McKown, J. W. Howard, Bud Williams (Col.) John T. W. Davis, Brock Smith, (Col.) Ed Kehee, and many other defendants too numerous to name, defendants a manifest error hath happened, to the great damage to the said plaintiffs as by their complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said records and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the 31st day of December, 1923, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the Supreme Court of the United States, this the 5th day of November, in the year of our Lord one thousand nine hundred and twenty three.

Issued at office in the city of Fort Smith, Arkansas, with the seal of the District Court of the United States for the Western District of Arkansas, and dated as aforesaid.

Seal
Dist. Court U. S. A.
West. Dist. of Ark.

WM. S. WELLSHEAR,
Clerk, District Court of United States, Western District of Arkansas.

Allowed By:
John C. Pollock,
Judge.

Return to Writ.

United States of America,
Western District of Arkansas.—ss.

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, for the Eighth Circuit, a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the seal of said United States District Court, for the Western District of Arkansas, at office in the City of Fort Smith, Arkansas, this 27th day of November, A. D. 1923.

Seal
Dist. Court U. S. A.
West. Dist. of Ark.

WM. S. WELLSHEAR,
Clerk, District Court of the United States, Western District of Arkansas.
By Irma Smith, D. C.

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8 District Court of the United States Western District of Arkansas, Fort Smith Division.

Coronado Coal Company, et al., Plaintiffs,
No. 553. vs. Law.
United Mine Workers of America, et al., Defendants.

Record of proceedings in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, in the above entitled cause:

9 Motion to Amend Caption to Third Amended Complaint.

(Filed in U. S. District Court February 28, 1917.)

Come the plaintiffs herein and ask leave of the court to amend the caption to the last amended complaint by adding thereto, as defendant, after the words "United Mine Workers of America," the following:

"District Number 21 of the United Mine Workers of America."

In support of this motion the plaintiffs respectfully show that the body of the complaint makes said District No. 21 a party defendant.

Premises considered, the plaintiffs pray that said amendment may be made, as above prayed.

R. B. HULL,
H. S. DRINKER, Jr.,
JAMES B. McDONOUGH,
Attorneys for Plaintiffs.

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10 Order Allowing Amendment To Caption Of Third Amended Complaint.

(Entered in U. S. District Court February 28, 1917).

Before Judge Youmans.

On this day there came on for hearing, the motion of the plaintiffs to amend the caption in the above entitled cause, by adding thereto the words "District Number 21 of the United Mine Workers of America" after the words "United Mine Workers of America" in the caption.

The court, being well and sufficiently advised in the premises, grants said motion, and the complaint is therefore amended by adding said words in the caption.

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11 Third Amended Complaint.

(Filed in U. S. District Court February 27, 1917.)

In the District Court of the United States for the Western District of Arkansas, Fort Smith Division.

Coronado Coal Company, Denman Coal Company, Mammoth, Vein Coal Company, Bache-Denman Coal Company, Hartford, Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, each and all by C. H. Finley and H. P. Hilliard, Receivers, and C. H. Finley and H. P. Hilliard, Receivers, Plaintiff,

No. 553 vs. Law

United Mine Workers of America, P. R. Stewart, Fred Holt, John White, as President of United Mine Workers of America, P. R. Stewart, as President of United Mine Workers of America of District No. 21, James Mullen, National Executive Board Member United Mine Work-

ers of America, William McLaughlin, William McLaughlin, as President of United Mine Workers of America District No. 21, Tom King, Tom King as Board Member of United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, and Edward Cunningham, as President of District No. 21 United Mine Workers of America, Frank J. Hayes and Frank J. Hayes as Vice President of the United Mine Workers o America, William Green and William Green as Secre y-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brooks, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendricks, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara, Pete McMullen, John Mastell, Pink Dunn, Jim McNamara, Pete McMullen, John Mastell, James Slankard, Local Union No. 340 United Mine Workers of America, Local Union No. 374, United Mine Workers of America, Local Union No. 560, United Mine Workers of America, Local Union No. 586, United Mine Workers of America, Local Union No. 1130, United Mine Workers of America, Local Union No. 1159, United Mine Workers of America, Local Union No. 1526, United Mine Workers of America, Local Union No. 1530, United Mine Workers of America, Local Union No. 1565, United Mine Workers of America, Local Union No. 1810, United Mine Workers of America, Local Union No. 1814, United Mine Workers of America, Local Union No. 1824, United Mine Workers of America, Local Union No. 1842, United Mine Workers of America, Local Union No. 1912, United Mine Workers of America, Local Union No. 1934, United Mine Workers of America, Local Union No. 2027, United Mine
12 Workers of America, Local Union No. 2053, United Mine Workers of America, Local Union No. 2110, United Mine Workers of America, Local Union No. 2160, United Mine Workers of America, Local Union No. 2316, United Mine Workers of America, Local Union No. 2494, United Mine Workers of America, Local Union No. 2766, United Mine Workers of America, Local Union No. 2769, United Mine Workers of America, Local Union No. 2770, United Mine Workers of America, Local Union No. 2772, United Mine Workers of America, Local Union No. 2841, United Mine Workers of America, Local Union No. 2880, United Mine Workers, of America, M. B. Appleby, Bruce Jordan, Whit Miller, Ed Baker, H. S. Treadway, G. G. Daniels,

John Turnipseed, Lewis Evans, Joe Coneoda, B. Trout, Joe Assola, Joe Kervillas, Wm. Rodden, Charles Blackburn, Joe Lanier, Albert Hunter, Rich Handlin, Scott Adkins, Frank Petty, Claud Litchford, John Litchford, Otto Ailmen, Carey Crumpton, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren, Harry Birkett, Willis Congo, Leslie Congo, Bud Congo, Charles McKown, J. W. Howard, Bud Williams, (Col.), Wm. Price, Peter McMullen, Jr. John Murray, John T. W. Davis, Brock Smith (Col.), Ed Kehee, and many other defendants too numerous to name, Defendants.

Come the plaintiffs, and by leave of court, file this their third amended complaint herein, and for cause of action against the defendants above named, and each of them, the plaintiffs state as follows:

1. In the case of Coronado Coal Company, et al., vs. Sebastian County Coal Mining Company, et al., No. 246 Equity, pending on the equity side of this court, F. Bache in a single decree was appointed Receiver of all of the companies above named as plaintiffs herein, and thereafter in the same cause said F. Bache resigned as Receiver, and A. S. Dowd, was appointed as the receiver in succession. The said A. S. Dowd, as Receiver, filed a bond required by law, and by the order of the court, and immediately took possession of all of the property and assets of the said companies.

Subsequently the said A. S. Dowd resigned as Receiver, and C. H. Finley and H. P. Hilliard, plaintiffs above named, were appointed receivers in succession, filed bonds re-
13 quired by law and by order of the court, and immediately took possession of all the property and assets of the said companies, and all of their property and assets are at the date of the filing of this amended complaint in the hands of said C. H. Finley and H. P. Hilliard, as Receivers.

2. That the Bache-Denman Coal Company, the Coronado Coal Company, the Denman Coal Company, and the Mammoth Vein Coal Mining Company, were at the time of the appointment of said Receiver, and for many years prior thereto and still are, corporations organized and existing under the laws of the State of West Virginia; and the Mammoth Vein Royalty Company, the Mammoth Vein Coal Mining Company, the Prairie Creek Coal Mining Company and the Sebastian County Coal Company were at the time of the appointment of said Receiver and for many years prior thereto

and still are, corporations organized and existing under the laws of the State of Arkansas; that the Hartford Coal Company was at the time of the appointment of said Receiver and for many years prior thereto and still is, a corporation organized under the laws of the State of Oklahoma or Indian Territory.

3. That the Hartford Coal Company, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company, the Coronado Coal Company and the Prairie Creek Coal Mining Company and each and every one of them were at the time of the appointment of said Receiver and for many years prior thereto, operating coal companies engaged in the production, loading and shipment of coal for interstate trade and commerce and the coal lands of each of said companies from which said coal was mined and shipped were located in Sebastian County in the State of Arkansas.

4. That prior to the year 1914 and before the commencement of the difficulties hereinafter set forth, the Hartford Coal Company employed about seventy men; the Mam-
14 moth Vein Coal Company employed about three hundred men; the Coronado Coal Company employed about two hundred and fifty men, and the Prairie Creek Coal Mining Company employed about two hundred and fifty men, and that all of said operatives were employed by said respective companies in connection with the production, loading and shipment of coal in or about their respective mines for interstate trade and commerce, and that the value of the annual shipments and sale of coal by said mines respectively exceeded the following:

Hartford Coal Company,	$50,000.
Mammoth Vein Coal Company,	120,000.
Coronado Coal Company,	175,000.
Prairie Creek Coal Mining Co.,	120,000.

That seventy-five per cent of the coal shipped by each of said mines was sold and shipped to customers outside of the State of Arkansas, in the ordinary course of interstate trade and commerce.

That prior to April in the year 1914, the Mammoth Vein Coal Mining Company entered into a written contract with the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company, wherein and whereby it agreed to operate and produce coal from mines of the said Mammoth Vein Coal Company and the Prairie Creek Coal Mining Com-

pany for and in behalf of said companies, said Mammoth Vein Coal Company and said Prairie Creek Coal Mining Company continuing to sell and ship the coal so produced from their said respective mines as theretofore, the Prairie Creek Coal Mining Company selling and shipping the coal mined by said Mammoth Vein Coal Mining Company from the mines formerly operated by the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Company continuing to sell and ship the coal produced by the Mammoth Vein Coal Mining Company from the mines formerly operated by said Mammoth Vein Coal Company, and that 75 per cent of the output of each of said mines was so produced, loaded and shipped for customers outside of the State of Arkansas in the course of interstate trade and commerce.

That the Denman Coal Company, the Bache Denman Coal Company, the Sebastian County Coal Company, the Mammoth Vein Coal Company, and the Mammoth Vein Royalty Company, and each and every one of them were financially interested in one or more of the aforesaid operating companies either through contracts or the lease of coal lands on which said operating companies were working or through the ownership of all or the majority of the stock of said operating empanies.

5. That the mining of coal, as conducted by said operating companies, is not a manufacturing business, but includes only the taking of the coal in its natural condition from the earth and loading it on the cars of common carriers for transportation by them over their lines to the respective consignees and that about 75% of the shipments of said operating companies were made by common carriers on Interstate trains to points outside of the State of Arkansas, including the States of Oklahoma, Kansas, Nebraska, Texas, and Missouri; that among the employees, which each of said companies required for the conduct of said Interstate trade and business, were those who placed the cars of Interstate carriers in convenient places on the side tracks of said carriers for loading for interstate shipment, those who loaded said cars of common carriers on said tracks with coal for shipment to points outside of the state, and those who placed said cars so loaded for points outside of the state in their proper place on the tracks of said carriers where they could be hauled by the engines of said carriers over the tracks of said carriers and attached to Interstate freight trains for transportation to points outside of the State, and that the work of shipping coal when hereinafter mentioned, includes said loading and placing of said cars on

the tracks of said carriers; that the ownership and op-
16 eration of said mines and the taking and producing of coal therefrom, was but one step in the said interstate trade and business of said companies, and that said companies were dependent for the profitable conduct of their business upon the trade which it secured from customers outside of the state of Arkansas, and owned and operated said mines in said State of Arkansas for the purpose of carrying on said Interstate trade and business and would not have purchased or attempted to operate said mines except for the purpose of carrying on said Interstate trade and business, and one of the principal assets of said companies was their good will, trade and business with customers outside of the State of Arkansas, and said companies employed agents and salesmen in other states in order to protect, preserve, build up, and increase said Interstate trade, business and good will.

6. That the United Mine Workers of America is an unincorporated association of mine workers engaged in or about the work of mining and shipping coal in different mines in different states throughout the United States, and that its headquarters are located in the City of Indianapolis in the State of Indiana and it is subdivided into about Thirty districts and numerous local unions located in different states of the United States; that said local unions are also a part of the particular district branch having jurisdiction of the territory in which said local union is situated; that every member of any of said local unions and districts is a member of the United Mine Workers of America and subject to the rules laid down in its constitution and by-laws as well as the constitution and by-laws of the various district and local unions having jurisdiction over them respectively; that the member-
ship of said United Mine Workers of America exceeds
17 Four Hundred Thousand miners, most of whom are employed by the various union mines hereinafter described.

7. That each of the District branches and Local Unions which are a part of the said United Mine Workers of America to carry out the purposes and objects of said National Organization and more particularly to act with and for said National Organization in carrying out the general combination and conspiracy in the restraint of interstate trade and commerce as hereinafter more fully set forth.

8. That defendant District 21 of the United Mine Workers of America is one of the aforesaid District Branches of said United Mine Workers of America and has jurisdiction

over all Union Mines and miners in the States of Arkansas, Oklahoma, and Texas, and that all of the defendant local unions above named are affiliated with and subject to the laws of said District #21.

9. That the Local Unions named in the caption as defendant herein are unincorporated associations of mine workers in the State of Arkansas, having a separate president and secretary upon whom process may be served, and said local unions and their members are a part of said United Mine Workers of America and their members are members of said United Mine Workers of America, and the members of each of said Local Unions are so numerous as to make it impracticable to make all of said members defendants herein, and therefore the plaintiffs pray that said Local Unions may be brought into court by service upon their respective officers.

10. That John P. White is president of said United Mine Workers of America and that because of the numerous members of said United Mine Workers of America it is im-
18 possible to make each one a party defendant to this cause, but that said United Mine Workers of America is represented in its District #21 by P. R. Stewart formerly president and William McLaughlin, a member of the executive board of District 21 or President thereof, Edward Cunningham as vice president or president thereof, Tom King, a member of said executive board, James Mullen, a member of the executive board of the United Mine Workers of America, and Frank L. Hayes, Vice President of said United Mine Workers of America, William Green, Secretary and Treasurer thereof; that James Mullen is the agent of said United Mine Workers of America for the transaction of all business by said organization in the State of Arkansas and resides in the town of Midland; and the plaintiffs allege that said defendants sufficiently represent the United Mine Workers of America for the purpose of this action and that the service of process upon them and the trial of the suit in which they are parties will constitute proper representation of the United Mine Workers of America.

11. That said United Mine Workers of America and the combination of the defendants hereinafter described, divides all coal mines in the several states of the United States into two classes, one class being called "Union" or organized mines, because they are operated under an agreement with the United Mine Workers of America, or one of its District branches, to employ none but members of that Union in or about the work of producing, loading, and shipping coal and

to comply with all the rules and regulations of the United Mine Workers of America and its district branch having jurisdiction over the respective mines in accordance with their geographical location; the second group of said mines as so designated and classified by the defendants are known as non-union, unorganized, or "open shop" mines because they refuse to make such agreement with the defendants' combination to employ only members of the United Mine Workers of America exclusively although many of them do not discriminate against or refuse to employ any person on the ground that he is a member of said union. That the coal produced by said Union mines is hereinafter described or designated as Union coal, and the coal produced by the unorganized non-union or "open shop" mines is at times hereinafter designated as non-union coal.

12. That owing to the restrictions and unreasonable regulations which the United Mine Workers of America imposes on all Union or organized mines, said mines are conducted wastefully and inefficiently and the cost of production and the selling price of Union coal is thereby unreasonably and unnecessarily enhanced and cannot successfully compete with the products of non-union mines throughout the course of interstate trade and commerce, and it is because of this fact and to protect said Union mines against said non union competition in coal of the lower selling price that the United Mine Workers of America and those acting in conjunction with them, have divided all mines in the United States into two classes to be designated respectively as Union mines or non-union mines in order that they may more readily and effectively prevent and restrain all interstate trade and competition in the products of non-union mines.

13. That except for the anthracite coal mines in the State of Pennsylvania, practically the entire business of mining and shipping coal in the United States is done by what is known as bituminous mines located in the states of Washington, Wyoming, Utah, and Montana in the Northwest, Illinois, Ohio, Indiana and Michigan in the northern Middle States; Iowa, Colorado, New Mexico, Kansas, Missouri, Oklahoma, Arkansas, Texas, Kentucky, Tennessee, and Alabama in the Middle and Southern States and Pennsylvania, Virginia, West Virginia, and Maryland in Eastern States; that each and every one of the bituminous mines in the several states above mentioned is engaged in or subject and liable to competition in the course of interstate trade, from the mines in one or more of the other states above named, and nearly every one of said mines is subject to competition of the mines

of each and every one of the several states above named in reaching or attempting to reach different markets of the United States in various industrial centers in different states through the course of Interstate trade made possible by transportation of common carriers from one state to another.

14. That the mines for which the plaintiffs are acting as receivers when in operation, compete directly with the mines of Illinois, Kentucky, Alabama, New Mexico, Colorado, Kansas, Oklahoma, and other mines of Arkansas for the markets of Louisiana, Texas, Oklahoma, Nebraska, Kansas, Missouri, Iowa, and Minnesota, and are subject to the competition of said mines in endeavoring to reach the various markets of other states through the channels of Interstate trade and commerce. That the mines of Illinois sell coal through the course of Interstate trade and commerce to markets in Louisiana, Texas, Missouri, Nebraska, Kansas, and other states, and the operating companies for which plaintiffs Finley and Hilliard are acting as receivers, sold coal through the course of interstate trade and commerce to purchasers in said markets and states and thereby entered into interstate competition with said mines of Illinois in said states, and others, and are subject to and affected by the Interstate competition of said mines and others in many other states; that except for the unlawful interference of the defendants hereinafter set forth, each of said mines would have engaged in Interstate competition with the said mines of other states as aforesaid in the year 1914.

15. That all of said coal mines of Illinois, Ohio, Indi-
21 ana, Wyoming, Michigan, Missouri, Iowa, Texas, Arkansas and Oklahoma are Union, and part of the bituminous mines of Pennsylvania, Kentucky and West Virginia are union, and that said mines of Colorado, New Mexico, Alabama, Virginia and Tennessee are non union or unorganized; that the annual output of bituminous coal in the United States is a little less than 500 million tons, if which the state of Pennsylvania produces over one-third; the states of Ohio, Illinois and Indiana produce over one-fifth; and the State of West Virginia produces about one-seventh; that at least 60 per cent of the entire production of bituminous coal in the aforesaid states of the United States is produced by the so-called Union or organized mines; that if the attempts of the United Mine Workers and those working in conjunction with them in the unlawful conspiracy hereinafter set forth are successful in carrying out their conspiracy to unionize all the bituminous coal mines of Pennsylvania, West Virginia, Virginia and Colorado as hereinafter set forth, then

about 90% of the bituminous coal produced in the United States which enters into Interstate trade and commerce will be coal produced by the so-called Union Mines, and if the United Mine Workers of America were successful in all the attacks which it has made in different district upon non-union mines in furtherance of said unlawful conspiracy, the said combination would have substantially a complete monoply of Interstate trade and commerce in coal in the United States and the amount of non-union coal which entered into interstate commerce would be negligible.

16. That the United Mine Workers of America, the defendants, and many other persons to the plaintiffs unknown, now are and for many years past, have been, engaged in an unlawful combination and conspiracy, as hereinafter more fully set forth, in unlawful restraint of trade and commerce in coal among the different states of the United States, and through means whereof are unlawfully attempting to monopolize and are monopolizing said trade and commerce; that in furtherance of said unlawful combination and conspiracy, the defendants, the United Mine Workers of America, and those confederated together with them in said unlawful scheme have combined and conspired together to exclude and drive out of Interstate trade and commerce, and to restrain and prevent all Interstate trade and commerce in, and all coal produced, loaded and shipped by so-called non-union and unorganized mines by hampering, preventing, and interfering with the production, loading and shipment of coal for Interstate commerce in any of the coal mining states by any so-called unorganized or non-union mines, so that it cannot become a subject or commodity of Interstate trade and commerce and cannot enter into Interstate competition with the products of so-called Union or organized mines located in divers states, and to further carry out said conspiracy by hampering and interfering with the production, loading and shipment for Interstate trade and commerce by said non-union or unorganized mines in any and all the several states where said mines are, or may be located, with the purpose and intent of increasing the cost of production, loading and shipment of said commodities so destined for Interstate trade and commerce and the resulting selling price thereof in the markets of the different states reached by said Interstate shipments, so that said commodities cannot successfully compete in said markets with the coal produced, loaded and shipped by the so-called Union or organized mines working under agreement with said unlawful combination in the several states where located.

23 17. That one of the objects of said unlawful combination and conspiracy in restraint of Interstate trade is to monopolize the trade or occupation of mining coal for the members of the United Mine Workers of America and prevent the employment of non-union men in any part of the United States at the trade or craft of mining coal and prevent the products of the labor of non-union mines from becoming subjects or commodities of Interstate trade and commerce in order thereby to more effectually compel them to abandon the trade or vocation of coal mining or become members of the said United Mine Workers of America and thereby to secure complete monopoly and unification in control and management so far as labor is concerned of all competing mines in all parts of the United States as has already been achieved by said combination in many states as aforesaid.

18. That the scope and object of said illegal scheme is to suppress and destroy the business of all non-union and unorganized mines whose products enter into Interstate trade and by various means to prevent any mining company from engaging in the business of selling coal for Interstate trade as an unorganized mine and prevent any of the so-called union or organized mines from commencing operations as a non union or unorganizer mine and thus by such suppression, obstruction, and destruction of the business of any of the independent and competing mines in the several states which are operating or may hereafter operate on a non union or unorganized basis, to completely monopolize Interstate trade and commerce for union coal produced under the domination of the United Mine Workers of America, and maintain the price of said union coal in Interstate commerce by protecting it from Interstate competition of coal which but for said combination would be mined by the more efficient non-union mines.

24 19. That the object and purpose of said combination in extending its domination and control over separate and competing mines in different states, which in the absence of said unlawful combination would be engaged in Interstate competition with each other, and the sole object and purpose of said combination in destroying or preventing Interstate shipments of coal by all mines in any of the coal mining states, which do not acquiesce in its control and domination, is to prevent any coal not produced by Union mines from becoming a subject of Interstate commerce and enter-

ing into interstate competition with the products of so-called Union mines and to further carry out agreements and understandings hereinafter described, between the proprietors of the so-called Union mines and said unlawful combination to the effect that the defendants and others acting in conjunction with them in said unlawful conspiracy will protect interstate trade and business of said Union mines from the competition of unorganized mines by employing all the means available to organized labor to prevent the production, loading and shipment of coal for interstate trade and commerce by unorganized mines.

20. That in furtherance of said unlawful combination and conspiracy to unduly restrain Interstate trade and commerce, and to exclude the products of all unorganized mines and Non-union miners from Interstate trade and commerce, the United Mine Workers of America working through their district organizations, and the defendants, have ordered and coerced strikes of employees employed by unorganized mines in different states and by violence, intimidation, mobs and riots prevented the employment of any miners in said mines for production, loading or shipment of coal for interstate commerce, and by dynamite and arson and other unlawful means have destroyed the facilities of said unorganized mines for producing, loading and shipping coal for Interstate commerce and by divers other means have hampered, interfered with, prevented and attempted to unduly enhance the cost of, producing, loading and shipping of coal by said unorganized mines for Interstate commerce, so that it would no longer be marketable as an article or commodity of Interstate trade and commerce in competition with Union coal.

That each and every one of the acts hereinafter set forth, wherein and whereby the production, loading and shipment of coal by plaintiffs or any other unorganized mines, was destroyed, interrupted, hampered or interfered with, were done and carried out in furtherance of the aforesaid combination and conspiracy to unduly and directly restrain interstate trade and commerce and with the intent, purpose and effect thereof as hereinabove set forth, and with the purpose and effect of inducing and forcing persons and corporations formerly engaged in Interstate trade as non-union mines to refrain therefrom until such times as they would carry on said business as Union mines upon terms dictated by said combination and conspiracy.

21. That in furtherance of the combination and conspiracy to restrain interstate trade and commerce in bituminous coal and to prevent any non-union coal from entering into Interstate trade and commerce, the United Mine Workers of America and its District branches have from time to time since 1898 entered into negotiations, understandings and agreements with the operators of Union Mines in the States of Ohio, Illinois, and Indiana and other states, wherein and whereby it was understood and agreed that in consideration of said operators agreeing to or continuing to operate Union Mines, the said United Mine Workers of America, the defendants and those working in conjunction with them in said unlawful scheme and purpose, would by strikes and the usual unlawful means which invariably accompany all strikes conducted by the United Mine Workers or any of its
26 branches, prevent the production and shipment of bituminous coal by all so-called non-union and unorganized mines in other states whose products come into Interstate competition with the products of said Union mines through the course of Interstate trade and commerce, and that said agreement and understanding required said United Mine Workers and its said branches to use all means in its power to interfere with and prevent interstate commerce in bituminous coal by all unorganized mines and by all competitive mines which should thereafter become non-union or unorganized and that the combination and conspiracy herein described to interfere with and destroy the business of the mines for which plaintiffs Finley and Hilliard, are acting as Receivers, and all acts in furtherance thereof hereinafter described were done in pursuance of said illegal arrangement, contracts, and understandings between the said United Mine Workers and said Union Operators to destroy and prevent Interstate trade and commerce in bituminous coal from unorganized fields by destroying or interfering with the facilities of said unorganized mines for the production and shipment thereof.

22. That in furtherance of said illegal combination and conspiracy to restrain and prevent Interstate trade and commerce in bituminous coal and drive all non-union coal out of Interstate trade and commerce, the said United Mine Workers of America and those working in conjunction with them, did at various times since 1898, embark and engage upon a general campaign and crusade to prevent all the non-union bituminous mines in the state of Pennsylvania which were producing about 12 per cent of the entire output of bitumin-

ous coal in the United States from engaging in Interstate trade and commerce in non-union coal, by ordering a strike of employees in said mines and through violence, intimidation and threats, preventing the employment of any operatives for the production, loading and shipment of coal, and by
27 the use of fire and explosives destroying the facilities of said mines for the production, loading and shipment of said coal;

And that in or about the year 1911 said United Mine Workers and those acting in conjunction with them, did undertake to and did employ said means in furtherance of said unlawful design against certain non-union mines in Westmoreland and Irwin Districts in the State of Pennsylvania known as the Westmoreland and Irwin mines, in order to prevent said mines from engaging in Interstate trade and commerce in non-union coal;

That in furtherance of said illegal combination and conspiracy to restrain trade among the several states in coal as hereinabove set forth, said United Mine Workers and those acting in conjunction with them, did in the year 1913 enter into a general campaign and crusade against Non-union mines in the state of Colorado and agreed to and did order a strike of said employees of said various competing mines of said state and by violence, threats, and intimidations, did prevent said mines from procuring further employees to produce, load or mine coal for the Interstate trade and commerce of said mines, and did by use of fire and explosive destroy the facilities of said mines for the productions, loading and shipment of coal for Interstate trade and commerce in order thereby to destroy Interstate trade and commerce in non-union coal;

That at various times since 1906, and in furtherance of said unlawful scheme to restrain trade and bituminous coal among the several states, said United Mine Workers and those acting in conjunction with them, did engage in a general campaign and crusade to destroy Interstate trade and business of the Non-union bituminous mines in West Virginia by ordering strikes of the employees of said companies engaged in the work of producing, loading and shipment of coal for Interstate trade and commerce and by viol-
28 ence, threats and explosives, and by preventing the employment of other operatives to carry on said work and by fire and explosives destroying the facilities of said mines for the production, loading and shipment of said coal for Interstate trade and commerce; and that said United

Mine Workers and those working in conjunction with them have from time to time on other occasions employed all of said means to destroy the business of all of said non-union companies in Pennsylvania, West Virginia, Colorado and other states in order thereby to prevent said companies from shipping non-union coal for Interstate trade and commerce.

23. That early in the year 1914 all said companies for which the plaintiffs, Finley and Hilliard, are acting as receivers, decided that said operating companies should be conducted on a non-union or open shop basis without discrimination against any employee on the ground that he was or was not a member of any Union, and that about the middle of March, 1914, the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company closed down their said mines and discontinued operation as Union mines preparatory to re-opening upon the non-union or open-shop basis in the month of April 1914; that the Hartford Coal Company had not been in operation for over a year previous thereto but it was the plan and intention of said company to also re-open upon the non-union or open-shop basis as soon as it became expedient so to do, or at least in the summer of 1914; that the Coronado Coal Company continued operation as a Union company until April 18, 1914, when its employees were ordered out on a strike by the defendants in furtherance of the unlawful conspiracy herein set forth, because some of the individuals interested in said mines that were going to be operated as open shop had also financial interests in said Coronado Coal Company and might use their profits from said company to carry on Interstate commerce in Non-union coal from said other mines that before said strike took place and
29 early in the year 1914, as aforesaid, it was the intention of the said Coronado Coal Company and the persons and corporations financially interested in it that said company should be placed upon the non-union or open-shop basis of operation as soon as expedient or at least by the summer of 1914; that said plan of operation for said mines was in part to be carried out by having the Mammoth Vein Coal Mining Company operate the mines of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company under its written contract described in Paragraph marked "4" herein.

24. That in the year 1914 each of said operating companies for which the Plaintiffs Finley and Hilliard are acting as Receivers had made preparations to do a large and profitable business with dealers in coal in other states and to renew,

manage, and conduct said interstate trade and commerce upon a non-union and "open shop" basis and the condition of the market outside of the state of Arkansas in which said companies would sell their said coal and the condition of the business of said companies was such as to warrant the full belief that the ensuing season would be a profitable one to said companies and that in the year 1914 when the defendants undertook to destroy the business of said operating companies, for which the plaintiffs Finley and Hilliard are now acting as Receivers, some of said operating companies had actually commenced and were engaged in carrying on said Interstate trade and business, and enjoying said Interstate good will and were shipping non-union coal to customers in other states in the course of Interstate trade and commerce, and the rest of said operating companies were prepared to commence and renew their Interstate trade and business and were intending to renew said Intertsate trade and business on a non-union basis.

25. That at all times after April first, 1914, the Defendants and those acting in conjunction with them in furtherance of the unlawful conspiracy hereinafter set forth, well knew of said intention, plans, and costly preparations of said companies, persons and corporations in control thereof, to operate each and every one of said mines in the future upon the open-shop or non-union basis, and to sell and ship non-union coal in Interstate commerce in competition with Union Mines as soon as possible, and that all of the acts hereinafter described which were done by the defendants and those acting in conjunction with them to injure and destroy the business and property of said companies, were done in furtherance of said unlawful scheme and conspiracy to prevent interstate trade and commerce in bituminous coal produced, loaded or shipped by so-called non-union or open-shop mines.

That in April 1914 and at various times thereafter in furtherance of said plans to have all said companies engage in Interstate trade as non-union mines, some of said operating companies for which plaintiffs Filey and Hilliard are acting as Receivers, began to operate their said mines on an open-shop basis, or as non-union or unorganized mines, and from time to time in the year 1914 employed large numbers of men engaged respectively in the work of mining, loading and shipping coal for Interstate trade and commerce, preparatory to employing additional miners and opening additional mines for the purpose of carrying on an interstate trade and com-

merce on a still larger scale, and preparatory to having all of said operating companies do likewise. That none of the said miners so employed belonged to or had any connection or association with, the United Mine Workers of America, or any of its District branches or any of the defendants, but that the defendants, the United Mine Workers of America and those acting in conjunction with them, in furtherance of their combination and conspiracy to drive non-union coal out of Interstate trade and commerce and to restrain and prevent Interstate trade and commerce therein,
31 and in furtherance of their understanding with the proprietors of Union mines competing with said mines, combined and conspired together in furtherance of said conspiracy, to ruin and destroy the Interstate trade and commerce of said mines and to prevent them from commencing or engaging or continuing therein by interfering with and preventing the production, loading and shipment of coal for Interstate commerce by said mines and in furtherance of said combination and conspiracy, they agreed upon and did the following acts: By threats, intimidation, violence, and unlawful assemblies, they drove and frightened away all of the men employed by said mines at the work of mining, loading, and shipping coal for Interstate trade and commerce, including those men employed at the work of placing cars of Interstate carriers at the proper place on the tracks of said carriers where they could be loaded with coal for shipment outside of the state, and including those men employed in loading said cars of the common carriers, and those who placed the cars after loading upon the proper part of the tracks of the common carriers where they could be taken up by the Interstate trains of said carriers for transportation to points outside of the state; and by threats, violence, murder, mobs, and riots, prevented the said companies from employing or obtaining for employment any other operatives to load said cars of Interstate carriers and to manipulate and place said cars before and after loading for interstate transportation in their proper place on the tracks of the carrier; and by the same unlawful methods, prevented said companies from employing or obtaining for employment any miners whatsoever to perform any of the work of mining, loading and shipping coal for said mines; and by the use of fire, dynamite and other explosives, they did destroy the struc-
32 tures and other valuable facilities of said mines for the production, loading, and shipment of coal for interstate trade and commerce, and did destroy the cars of Interstate carriers, which were stationed at or about the mines

waiting to be loaded with Interstate shipments, and destroyed cars of said carriers and shipments already loaded thereon to be hauled away by Interstate carriers for transportation to consignees outside of the State of Arkansas and destroyed the business of other concerns in which the same persons were interested in order to impoverish said persons and prevent their carrying on said non-union coal mining business; that by said unlawful means said defendants and those acting in conjunction with them, prevented any of said companies from engaging or continuing to engage in Interstate trade and commerce; and the defendants well knew and intended that the destruction of the coal mines of said operating companies located in Sebastian County, Arkansas, and their interference with the operation thereof, would result in the destruction of the Interstate trade and commerce of said companies, and the defendants destroyed said mines for the express purpose of entirely destroying and ruining said Interstate trade and business; that none of the defendants or anyone acting in conjunction with them had any interest or object in destroying said property and interfering with the operation of said mines as aforesaid, except in so far as said destruction and interference prevented the sale and shipment of coal by the said companies in competition with Union mines in which said combination was interested, and their primary and direct object in so doing was to destroy the Interstate trade and commerce of said companies because it constituted 75 percent of the trade and com-
33 merce conducted by them, and that the destruction of the working organization and production facilities of the said companies was but a step in a scheme and purpose to destroy interstate trade and commerce in non-union coal and prevent it from coming into competition with Union coal in the course of Interstate trade and commerce.

That the names of the defendants and those acting in conjunction with them, participating in the acts above in this paragraph 26 mentioned, in so far as plaintiffs are able to specify the same are the following, said acts having been participated in also by many other individuals, parties to said combination and conspiracy and accomplices therein whom plaintiffs are unable to name:

Clint Burris; Will Johnson; Pete R. Stewart; John P. White; A. S. Howard; W. J. Hamilton; Charles McCowen; John Kiger; Thomas Haggerty; James McNamara; R. M. Hamilton; Freda Hogan; Ed Brandon; John Manick; Wm. Green; Joe Smith; John Walker; Sandy Robinson; Sam

Warren; Bob Razorback; Roy Smith; Mike Cisco; Dr. Chambers; Fred Holt; Frank Pattie; Joe Gravina; Robt. Davis; Hervy Davis; Omar Baker; Wm. McLaughlin; Sell Goddard; Bill Coffelt; Joe Overman; Lewis Fioretti; Pete Clements; Tom Kiger; F. M. King; Henry West; Dave Crofton; Tom King; Gus Null; Will Newman; Lee Anderson; Oscar Rodenberry; I. N. Witt; Dan Fitzgerald; Jess Edwards; Andy Kyle; Marion Hulsey; Jess Griffin; John Fridlenhouse; Pete McMullen; Zed Crigger; Jim Lowery; Chas. Farley; Bill Stevenson; J. W. Howard; Walter Newman; Maje Hulsey; John Newton; E. P. Metz; Walter Sweet; Edw. Cunningham; Leo Bach; Bass Shelley; Jim Ford; G. Daniels; Tom Congo; Lewis Evans; N. Wyatt; M. D. Berry; Frank Scofield; Frank Worstine; Frank Hayes; Gus Reed; Bob White; Isaac Gould; Jim Lee; Jim Herbert; W. D. Thompson; Joe Coneodo; Jim Meeks; James Walker, Dave Wilkerson; Dick Blair; A. H. Brown; Joe Mazill; Henry Willis; Jim Davis; O. A. Brooke; W. A. Davis; John Miller; Chas. Bach; Edgar Davenport; John Graham; Sid Shaw; B. Trout; Howard Shaw; Joe Loyd; Tom Rodden; Claud Carruth; Fred Todenhanfer; W. T. Morgan; Chas. Hendricks; Wm. Rodden; Geo. Reed; W. P. Fitzgerald; Jake Thompson; Fred Wooten; Peter McMullen, Jr.; Will Allen; Joe Assola; George Manick; Robert Johnson; Jim Pattie; Moro Collo; J. A. Morphew; George Burnett; Frank Savage; James Clements; Louis Schmidt; Will Miller; "Doc" Jones; Pink Dunn; A. S. Davis; Ed Meeks; Blue Johnson; Marvin Stanfield; Foster Bean; Sim Phillpotts; John Mastell; John Lowery; Mrs. Marion Crumpton; Pickins Tillery; M. B. Appleby; Bob Graham; August Smith; Loyd Clayborn; Bruce Jordan; Charles Dodd; John Bumpass; Whit Miller;

34 S. O. Harris; Mike Hunter; Ed. Baker; Ed Long; John Miller, Jr.; E. W. Jones; H. S. Treadway; Gus Olson; Will Price; Roy Smith; Virgil Wann; John Turnipseed; M. F. Ward; John Wooten; J. W. Thomas;

That the dates when the principal acts were committed which caused injury to and destruction of the physical property of the companies of which plaintiffs Finley and Hilliard are acting as Receivers, were April 6th, 1914, July 17th, 1914, July 18th, 1914, July 19th, 1914, and July 20th, 1914.

That the names of those employed by the companies of which plaintiffs Finley and Hilliard are acting as Receivers, prior to the acts of defendants herein complained of, who or some of whom were driven or frightened away from said

mines by defendants as aforesaid were inter alios the following:

J. T. Allison; F. Davis; J. W. Sylesberry; G. Davis; J. E. Sylesberry; H. Koontz; S. C. Thomas; Halles Owens; J. Prince; Jim Colclosure; E. Howard; Earl Koontz; B. Hobson; J. N. Hamilton; O. Jones; Chase Suttles; C. Prince; Bud Willett; J. H. Minton; Harry Dunlap; Grovery Handley; Tom Perry; E. B. Burton; Chase H. Newman; Fay DeQuasie; Jack Brooks; J. W. Kursey; Ed Daugherty; W. Sanders; A. Daugherty; Ed Hoadley; C. A. Russell; T. J. Roberts; A. D. Hallaway; W. Waddell; J. P. Malloy; H. Lovell; Peter Epperson; W. Young; J. R. Shanklin; H. Lyston; T. D. Malloy; M. A. Roberts; John Baskin; G. Watts; J. A. Parrish; W. E. Harger; J. H. Smith; A. O. Hale; Oliver Jones; J. J. Garrett; Walter Lancaster; Joe Wasser; Ed Stricklin; Bob Morris; H. B. Werschky; Jim Grant; Abe Moses; J. J. Johnson; William Thomas; John Long; Sarl Saalfeld; E. Doughitt; M. Doughitt; Jim Gullett; Levi Brown.

That the dates on which the overt acts were committed which resulted in the driving away or frightening away of the above named employees of said companies and in the deterring other persons, whose names are unknown to plaintiffs, from entering their employ were principally the following dates during the year 1914:

April 5, 6, 7, 13, 20 and 22; May 13, 16, 18, 25, 26 and 29; June 9, 10, 11, 15, and 30; July 13, 14, 15, 16, 17, 18, 19 and 20;

Plaintiffs also believe that other similar acts were committed by said defendants and individuals above named and by other persons whose names plaintiffs are unable to specify, acting in conjunction with them, on other dates between April 1, 1914 and July 20, 1914, and subsequent to July 20, 1914, down to the filing of this suit, and subsequent thereto, by which there was created a continuous atmosphere of terrorization which effectively prevented any persons from entering or continuing in the employ of said companies through fear of harm or violence to their persons or property from defendants.

27. That except for the unlawful combination and conspiracy of the defendants and the acts done in furtherance thereof as aforesaid, the said Hartford Coal Company, the Mammoth Vein Coal Company, the Coronado Coal Company, the Prairie Creek Coal Mining Company, and the Mammoth Vein Coal Mining Company would have, long prior to the

commencement of this action and in a short time, secured employees to man their mines and engage in the work of producing, loading and shipping coal for Interstate trade and commerce and would as non-union and unorganized mines have successfully shipped coal to the amount of over $600,000 annually in the aggregate and would have been able to realize a large profit thereon.

28. That by reason of said combination and conspiracy of the Defendants in restraint of Interstate trade and commerce and the acts done in furtherance thereof to injure and destroy the business of the said companies for which the plaintiffs Finley and Hilliard are acting as receivers, the said companies have suffered great loss and injury to their said business and property in the total sum of $740,689.42, which is the total amount of damage suffered by all of said companies to the date of filing this amended complaint. Said sum is apportioned between said companies and itemized as follows:

36

Prairie Creek Coal Mining Company.

Physical damage to plant and equipment	$ 64,500.00	
Loss of advance development	18,332.10	
Loss of house rents	3,384.00	
Loss of value of leaseholds cancelled	194,841.60	281,057.70

Mammoth Vein Coal Company.

Physical damage to plant and equipment	59,193.98	
Loss of advance development	13,651.80	
Loss of advance royalties	5,802.56	
Loss or House Rents	2,312.00	
Loss of value of leaseholds cancelled	36,250.00	117,210.34

Mammoth Vein Coal Mining Company.

Loss of advance development	8,600.29	
Loss of advance royalty	12,591.52	
Loss of value of leaseholds cancelled	171,761.63	192,953.44

Coronado Coal Company.

Physical damage to plant and equipment	35,578.72	
Loss of house rents	1,134.00	
Loss of value of leaseholds cancelled	52,984.00	89,696.72

Hartford Coal Company.		
Physical damage to plant and equipment	2,650.00	
Loss of advance development	16,666.67	
Loss of value of leaseholds cancelled	8,898.30	28,214.97
Sebastian County Coal Company.		
Loss of value of leaseholds cancelled	17,661.10	17,661.10
Mammoth Vein Royalty Company.		
Loss of royalties	4,000.00	4,000.00
Bache-Denman Coal Company.		
Liability on bond	4,245.15	4,245.15
Denman Coal Company.		
Physical damage to plant and equipment	4,150.00	
Loss of house rents	1,500.00	5,650.00
		740,689.42

37 By reason of the contractual relations existing between the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Mining Company, above referred to, the damage above alleged as having been suffered by the Prairie Creek Coal Mining Company, was also suffered by the Mammoth Vein Coal Mining Company; by reason of the contractual relations existing between the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company, above referred to, the damage above alleged as having been suffered by the Mammoth Vein Coal Company on account of loss of advance development, loss of advance royalty and loss of value of leaseholds cancelled, and $56,543.98 of the total of $59,193.98 on account of physical damage to plant and equipment, was also suffered by the Mammoth Vein Coal Mining Company; but one recovery being asked for each item in each instance hereunder.

29. The said conspiracy of the defendants was an unlawful contract, combination and conspiracy in restraint of trade and commerce among the several states of the United States in violation of the Anti-Trust Act of Congress of July 2, 1890. The said companies for which plaintiffs Finley and Hilliard are acting as Receivers were, by reason of said unlawful combinaton and conspiracy of the defendants, damaged and injured in their business and property in the total

sum of $740,689.42. And by reason of the provisions of said act of Congress of July 2, 1890, the plaintiffs, Finley and Hilliard as Receivers thereof are entitled to recover of and from the Defendants, and each of them, the damages prescribd by said Act of Congress, which is three times the actual value of the property injured, and destroyed, and plaintiffs
38 Finley and Hilliard are, therefore, entitled to recover of and from the defendants and each of them, the total sum of Two Million Two Hundred twenty-two thousand, sixty-eight dollars and twenty-six cents ($2,222,068.26) and all costs and reasonable attorneys fees, as provided in said Act of Congress.

30. The plaintiffs allege that the said United Mine Workers of America has no property known to the plaintiffs except the funds which it has to its credit in the American National Bank of Fort Smith, Arkansas, and the dues which are paid to it by said United Mine Workers of America by the members thereof, which dues are paid through the coal operators and in Arkansas are paid through the Western Coal & Mining Company, the Central Coal & Coke Company, the Bolen-Darnall Coal Company, the Branner Coal Company, and other coal companies operating in the State of Arkansas and other states The said United Mine Workers of America have entred into a contract with the coal operators in District No. 21 and under that contract there will be due and paid to and in other states, especially the states of Kansas, and Oklahoma, large sums of money. A part of said funds belonging to said United Mine Workers of America is now in the American aNtional Bank of Fort Smith, Arkansas, and large sums will also be due from the coal companies above named, to-wit: The Central Coal & Coke Company, the Western Coal & Mining Company, the Bolen-Darnall Coal Company, the Branner Coal Company, and the other coal companies And these plaintiffs have no other means of having any judgment which they may obtain against the defendants satisfied other than having said sums of money attached and gar-
39 nished and impounded in the hands of said coal companies and said bank. The said defendants are about to remove and will remove a material part of their property out of said state, not leaving enough therein to satisfy the claim of the said plaintiffs, and therefore said plaintiffs ask an attachment against said funds and ask that a writ of garnishment herein be issued against the American National Bank of Fort Smith, Arkansas, and the Western Coal & Mining Company, the Central Coal & Coke Company, the

Bolen-Darnall Coal Company, and the Branner Coal Company, and such other parties as plaintiffs may show to have in their hands money and property belonging to said defendants. The said plaintiffs ask that each of said defendants, be and such others as may be suggested be, served with said writ of garnishment and attachment, and that the said garnishees be required to answer herein, and plaintiffs herewith tender a good and sufficient bond and also tender said affidavit required by law for said writs of garnishment and attachment.

Premises considered, the plaintiffs pray judgment against the said United Mine Workers of America and each of the defendants in the sum of Two Million, Two Hundred Twenty-two thousand, sixty-eight dollars and twenty-six cents, and all costs and reasonable attorney's fees herein.

Second Count.

For further cause of action against the defendants, the plaintiffs herein allege the facts as set forth in the first count above, and further state that the said unlawful conspiracy, formed by the said defendants, as set forth in said first count which is made a part hereof was formed unlawfully and wilfully, and with the unlawful and wilful purpose and design of preventing the plaintiffs from operating their mines, and of injuring and destroying, as shown above; the said
40 plaintiffs were damaged by reason of said conspiracy in the sum of $740,689.42, and said plaintiffs are entitled to recover that sum as actual damages and are entitled to recover the further sum of double that amount as punitive damages, or a total sum of Two Million, Two Hundred Twenty-two thousand, sixty-eight dollars and twenty-six cents ($2,222,068.26.)

Premises considered, the plaintiffs pray judgment against the defendants for said sum of $2,222,068.26 and all costs herein laid out and expended and for reasonable attorneys fees.

ROGER B. HULL,
HENRY S. DRINKER, Jr.,
READ & McDONOUGH,
Attorneys for Plaintiffs.

Affidavit.

I, Clyde H. Finley, on oath state that I am one of the Receivers referred to in the above and foregoing complaint, and that the matters and things set forth in the above complaint, are true to the best of my knowledge and belief.

Affiant further states in support of the application of the plaintiffs for order of attachment and writ of garnishment herein as follows:

First: The plaintiffs claim is due for the destruction by the defendants of the plaintiff's property as described in the complaint, and for treble damages as provided in the Anti-Trust Act of Congress. The property of the plaintiffs was destroyed unlawfully, willfully, and knowingly by the defendants.

Second: The said claim is just and plaintiffs are entitled to recover the amount claimed in the above and fore-
41 going complaint. The amount which this affiant believes that plaintiffs ought to recover is set forth in the complaint, and is the sum of $2,222,068.26.

The affiant further states that the defendants are about to remove and have removed a material part of their property out of the state of Arkansas, and not leaving enough therein to satisfy the claim of the plaintiffs

CLYDE H. FINLEY,
One of the Receivers.

Subscribed and sworn to before me this 27th day of February, 1917.

J. SAM WOOD, Notary Public.

My commission expires Aug. 18, 1919.

(Seal)

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42 Amendments to Paragraph Twelve and Twenty-One of the Complaint.

(Filed in U. S. District Court May 18, 1917.)

Come the plaintiffs herein and in response to the order of the court requiring a more definite and certain statement of the matters set forth in paragraph twelve of the amended complaint allege as follows, said plaintiffs asking that the allegations below be taken in place of and in lieu of section twelve of the compaint and that said section twelve as now amended and as set out below be taken and considered as a part of said amended complaint:

12. That owing to the restrictions and unreasonable regulations which the United Mine Workers of America imposes on all Union or organized mines, said mines are conducted wastefully and inefficiently and the cost of production and the

selling price of Union coal is thereby unreasonably and unnecessarily enhanced and cannot successfully compete with the products of non-union mines throughout the course of Interstate trade and commerce, and it is because of this fact and to protect said union mines against said non-union competition in coal of the lower selling price that the United Mine Workers of America and those acting in conjunction with them, have divided all mines in the United States into two classes to be designated respectively as Union mines or non-union mines in order that they may or more readily and effectively prevent and restrain all Interstate trade and competition in the products of non-union mines.

That plaintiffs further allege that the unreasonable restrictions and unreasonable regulations referred to above are as follows:

43 In every locality in which the United Mine Workers have succeeded in obtaining union recognition and enforcing the closed shop, its so-called contract with the union operators has contained and contains many clauses and provisions unreasonably restricting the employer in the operation of the property. Such contracts are all in the possession of and known by the defendants in this case.

The principal restrictive provision and regulation imposed by the Union is the essential one, known as the "closed shop", hereafter and heretofore described, the result of which is to prevent the employer from availing himself of the services of many valuable workmen and in producing a lack of discipline among the men actually employed, disastrous to the efficient organization of the business. A further direct result of the closed shop system is that the operating heads of the business are continuously compelled to devote a large portion of their time and energy to negotiating contracts and endeavoring to settle disputes arising thereunder, and to conferences over disputes with Union officials, who have no other business or function than to raise and discuss such questions.

The closed shop system under contract with the Union also results in practically precluding the operator from taking advantage of any improved methods of mining intended to reduce cost, such changes in mining methods being treated by Union officials as a departure from the Union contract of as not provided for thereby, with the result that no such change can be adopted without negotiating a new contract with the Union requiring time, trouble and concessions which in many

or most cases offset the economy to be produced by the proposed change of operation.

44 Other provisions which may be cited merely as examples of restriction imposed by the union throughout the country, and which vary in the different districts are:

Provisions limiting the number of men to be employed in a working place; provisions prohibiting a given class of employees from doing any work except the specific and restricted employment provided for that class; provisions requiring the employment of unnecessary men; provisions requiring an ambitious employee from doing more than a given amount of work in a day or in an hour, the purpose and result of which is to reduce the efficiency of all employees to that of the least efficient, countenanced by the Union; and innumerable other provisions both in the written contracts between the Union and Union operators and implied there from or so construed by the Union in their interpretations of such contracts and enforced by strikes and coercion, the main purpose and substance of all such regulations and restrictions being to prevent the operator from systematizing and ordering its operations and business in an efficient and economic manner and without being subject to the continual interference and dictation by union officials as to how and when its mines should be conducted and operated.

The plaintiffs further alleges that it is impossible to state and enumerate in detail and completely all the restrictions and unreasonable regulations which the United Mine Workers and the other defendants herein have imposed upon the union mines throughout the localities in which their activities have been manifest.

The plaintiffs allege that all o fsaid restrictions and unreasonable regulations are similar to those above set
45 forth and have for their object and purpose the complete domination of the labor element in the coal industry in the United States.

Amendment to Paragraph Twenty-one of the Complaint.

Come the Plaintiffs and in obedience to the requirement of the court to make paragraph 21 of the complaint herein more definite and certain and ask leave of the court to substitute for said paragraph 21 the following:

21. That in furtherance of the combination and conspiracy to restrain interstate trade and commerce in bituminous coal and to prevent any non-union coal from entering into Interstate trade and commerce, the United Mine Workers of America, and its district branches have from time to time since 1898 entered into negotiations, understandings and agreements with the operators of Union Mines in the States of Ohio, Illinois and Indiana and other states, wherein and whereby it was understood and agreed that in consideration of said operators agreeing to continuing to operate Union mines, the said United Mine Workers of America, the defendants and those working in conjunction with them in said unlawful scheme and purpose ,would [be] strikes and the usual unlawful means which invariably accompany all strikes conducted by the United Mine Workers or any of its branches, prevent the production and shipment of bituminous coal by all so-called non-union and unorganized mines in other states whose products come into Interstate competition with the products of said union mines through the course of Interstate trade and commerce, and that said agreement and understanding required said United Mine Workers and its said branches to use all means in its power to interfere with and prevent interstate commerce in bituminous coal by all unorganized mines and by all competitive mines which should thereafter become non-union or unorganized and that
46 the combination and conspiracy herein described to interfere with and destroy the business of the mines for which plaintiffs Finley and Hilliard are acting as Receivers, and all acts in furtherance thereof hereinafter described were done in pursuance of said illegal arrangement, contracts, and understandings between the said United Mine Workers and said Union operators to destroy and prevent Interstate trade and commerce in bituminous coal from unorganized fields by destroying or interfering with the facilities of said unorganized mines for the production and shipment thereof.

The plaintiffs specifically allege that the years in which the combinations and conspiracies were entered into as above alleged were in the year 1898 and each year thereafter down to and including the year 1916.

Further answering the plaintiffs state that in the States of Illinois, Ohio, Indiana and other states where the United Mine Workers of America absolutely control the labor situation the said agreements, conspiracies and understandings were had between said United Mine Workers of America, and each and every operator operating in said states with union

labor. These complainants do not know the names of the operators in the state of Illinois, Ohio, Indiana, and other states but allege specifically that under the contracts and under the understandings and agreements based up on the contracts between each and every operator in said states that was operating with union labor there was a distinct and specific understanding and agreement which said agreement was as above set forth. The plaintiffs allege that the defendants well know
the name of each and every operator in said states, and
47 know the managing officer of said operators and have
had dealings with them and they are posted with full and complete knowledge as to all of the agreements, understandings and conspiracies which have been so entered into and they know the names of every operator in said states, and are fully informed as to the nature of said conspiracies, understandings and agreements.

The plaintiffs further allege that under an agreement between said union operators and the United Mine Workers of of America, known as the Chicago agreement of 1898, said agreement being between the United Mine Workers of America on the one hand and the operators of the States of Illinois, Indiana, Ohio and western Pennsylvania on the other hand, expressly entered into an agreement whereby the parties to said agreement conspired and agreed that the United Mine Workers of America would, as heretofore alleged, control the union operators as against the non-union operators. The said agreement is well known to the defendants herein, and has been continued from 1898 down to the present time between the said United Mine Workers of America and every union operator and the name and address of each and every union operator is well known to the defendants herein, and is not known to the plaintiffs herein. In said Chicago agreement between the United Mine Workers of America and said operators above described, which said agreement is in possession of the defendants herein and is not in the possession of the plaintiffs herein and is well known to the defendants herein, and which said agreement has been continued between the United Mine Workers of America and said operators from that date to this there were agreements and clauses expressly providing as above alleged. The said agreement and clauses which are well known to the defendants were interpreted by
both the United Mine Workers of America and the
48 Union operators as an obligation upon the union
miners, requiring and obligating both sides to work in harmony for the benefit of the union operators and the union

miners and for the purpose of excluding from interstate commerce the product of non-union labor.

Premises considered the plaintiffs pray that the above and foregoing be taken as sections 12 and 21 of said complaint, and further pray for judgment as prayed in said original complaint.

ROGER B. HULL,
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JAMES B. McDONOUGH,
Attorneys for Plaintiffs.

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49 Amendment to Paragraph Twenty-one of the Complaint

(Filed in U. S. District Court June 20, 1917.)

Come the plaintiffs and in obedience to the requirement of the court to make paragraph 21 of the complaint herein more definite and certain and ask leave of the court to substitute for said paragraph 21 the following:

21. That in furtherance of the combination and conspiracy to restrain interstate trade and commerce in bituminous coal and to prevent any non-union coal from entering into interstate trade and commerce, the United Mine Workers of America and its District branches have from time to time since 1898 entered into negotiations, understandings and agreements with the operators of Union Mines in the States of Ohio, Illinois, and Indiana and other states, wherein and whereby it was understood and agreed that in consideration of said operators agreeing to or continuing to operate Union Mines, the said United Mine Workers of America, the defendants and those working in conjunction with them in said unlawful scheme and purpose, would [be] strikes and the usual unlawful means which invariably accompany all strikes conducted by the United Mine Workers or any of its branches, prevent, the production and shipment of bituminous coal by all so-called non-union and unorganized mines in other states whose products come into Interstate competition with the products of said Union mines through the course of Interstates trade and commerce, and that said agreement and understanding required said United Mine Workers and its said branches to use all means in its power to interfere with and prevent interstate commerce in bituminous coal by un-
50 organized mines and by all competitive mines which should thereafter become non-union or unorganized and that the combination and conspiracy herein described to

interfere with and destroy the business of the mines for which plaintiffs, Finley and Hilliard, are acting as Receivers, and all acts in furtherance thereof hereinafter described were done in pursuance of said illegal arrangement, contracts, and understandings between the said United Mine Workers and said Union Operators to destroy and prevent interstate trade and commerce in bituminous coal from unorganized fields by destroying or interfering with the facilities of said unorganized mines for the production and shipment thereof.

The plaintiffs specifically allege that the years in which the combination and conspiracies were entered into as above alleged were in the year 1898 and each year thereafter down to and including the year 1916.

Further answering the plaintiffs state that in the states of Illinois, Ohio, Indiana and other states where the United Mine Workers of America absolutely control the labor situation the said agreements, conspiracies and understandings were had between the said United Mine Workers of America, and each and every operator operating in said states, with union labor. These complainants do not know the names of the operators in the states of Illinois, Ohio, Indiana and the other states, but allege specifically that under the contracts and under the understandings and agreements based upon the contracts between each and every operator in said states
51 that was operating with union labor there was a distinct and specific understanding and agreement which said agreement was as above set forth. The plaintiffs allege that the defendants well know the name of each and every operator in said states, and know the managing officer of said operators and have had dealings with them and they are posted with full and complete knowledge as to all of the agreements, understandings and conspiracies which have been so entered into and they know the names of every operator in said states, and are fully informed as to the nature of said conspiracies, understandings and agreements.

That plaintiffs further allege that under an agreement between said union operators and the United Mine Workers of America, known as the Chicago agreement in 1898, said agreement being between the United Mine Workers of America on the one hand and the operators of the States of Illinois, Indiana, Ohio and Western Pennsylvania on the other hand, expressly entered into an agreement whereby the parties to said agreement conspired and agreed that the United Mine Workers of America would, as heretofore alleged, control the union operators as against the non-union operators. The

said agreement is well known to the defendants herein, and has been continued from 1898 down to the present time between the said United Mine Workers of America, and every union operator and the name and address of each and every union operator is well known to the defendants herein, and is now known to the plaintiffs herein. In said Chicago agreement between the United Mine Workers of America and said operators above described, which said agreement is in possession of the defendants herein and is now in the possession of the plaintiffs herein and is well known to the defendants herein,

52 and which said agreement has been continued between the United [—] Workers of America and said operators from that date to this there were agreements and clauses expressly providing as above alleged. The said agreement and clauses which are well known to the defendants were interpreted by both the United Mine Workers of America and the Union operators as an obligation upon the union miners, requiring and obligating both sides to work in harmony for the benefit of the union operators and the union miners and for the purpose of excluding from interstate commerce the product of non union labor.

And in answer to the last motion of the defendants which was sustained by the court, requiring the names of the operators to be set out, the plaintiffs state that the names of said operators referred to in the year 1898 were as follows:

Pgh. Consol. Coal Co.,
Waverly C. & C. Co.,
Imperial Coal co.,
Bridgeville Coal Co.,
Mansfield Coal and C. Co.,
National Coal Co.,
Keeling Coal Company,
McCue Coal Company,
Fidelity Coal Company,
Chartiers Blk. Coal Co.,
Eureka Coal Co.,
Blythe Coal Company,
Lick Run Mine,
Little Red Stone Co.,
Bower Hill M. Co.,
Alex Black Coal Co.,
Ohio & Penna. Coal Co.,
Youghy Coal Company,
Port Royal Coal & Co.,
Federal Coal Company,
Sheppler Gas Coal Co.,
Pittsburg & Western C. & C. Co.,
Yough River Coal Co.,
W. L. Scott & Co.,
James W. Ellsworth & Co.,
Canonsburg Coal Co.,
J. H. Somers Fuel Company,
Lake Shore Gas Coal Co.,
M. A. Hanna & Company,
Webster Gas Coal Co.,
Morgan Moore & Baine Co.,
Pittsburg & Wheeling Coal Co.
Ohio & Pennsylvania Coal Co.,
For Receivers W. & L. E. Interests,
M. A. Hanna & Co.,
Wills Creek Coal Co.,
James W. Ellsworth & Co.,
Coshocton Coal Co.,

D. M. Anderson,
O I C Mine,
Boyd Coal Company,
Boyd Coal Company,
Beadling Brothers,
Moon Run Coal Co.,
Cook & Son,
Essen Coal Co.,
Osborne, Saeger &
53 Co.,
Equitable Coal Company,
Black Diamond Coal & Coking Co.,
The Hocking Valley Coal Company,
W. P. Rend & Co.,
The Morris Coal Co.,
Courtright, Kistler & Co.,
The Somers Coal Company,
C. L. Poston,
The Greendale Furnace Co.,
The Ray Bould Coal Co.,
The Lost Run Coal Co.,
Juniper Bros. & Lampman,
Northern Fuel Co.,
Statler Coal Co.,
Northern Fuel Co.,
Northern Fuel Company,
The Luhrig Coal Co.
The Luhrig Coal Co.
Maple Hill Coal Co.,
Beaumont & Chauncey Coal Co
Zanesville Coal Co.,
Chapman Coal Co.,
Superior Coal Co.,
Tom Corwin Coal Co.,
Superior Coal Co.,
Ada Coal Company,
Wellston Coal Co.,
Marsh Coal Company
Fluhart Coal & Mining Co.,
Ohio Coal Company,
Jackson Hill Coal Co.,
Emma Coal Co.,
Indiana Bituminous Coal Co.,
Otter Creek Coal Co.,
Capt. J. M. Drake,
Jas. Mullins, etc.,
J. M. Walter,
New Pittsburg Coal Co.,
The Yurney & Jones Co.,
The Turney & Jones Co.,
The Columbus & Hocking Coal & Iron Co.,
The Sunday Creek Coal Company,
Jones Coal Company,
Hall Coal Company,
Emma Coal Company,
Buckeye Coal Company,
S. E. Evans & Company,
Jones & Morgan,
Price Bros.,
Eclipse Coal Co.,
Hurd Coal Co.,
Southwestern Coal Co.,
Wellston Coal Co.,
Superior Coal Company,
Tom Corwin Mining Co.,
Coalton Coal Co.,
Western Indiana Coal Co.,
Hymera Coal Co.,
Jackson Hill C. & C. Co.,
Coal Bluff Mining Co.,
Cable & Co., Washington,
Davis Co.,
Ehrman Coal Co.,
Island Coal Co.,
Calumet Coal Co.,
Torry Coal Co.,
Edwardsport Coal and Mining Co.,
Hancock & Conkle,
Summit Coal Co.,
Bruits Creek Coal Co.,
Brazil Block Coal Co.,
Grant Coal Co.,
Island Valley Coal Co.,
Crown Coal & Tow Co.,
Chicago-Virden Coal Co.,
Chicago & Minonk Coal & Tile Co.,

Linton Coal & Mining Co.,
New Pittsburg C. and C. Co.
Zeller & McClelland,
Crawford Coal Co.,
Jackson Coal and Mining Co.,
McIntosh & Co.,
Eureka Block Coal Co.,
Chicago & Indiana Coal Co.,
Maule Coal Co.,
South Linton Coal Co.,
Buckeye Coal Co.,
Harder & Hafer,
Jos. Somers,
Hazel Creek Coal Co.,
Vigo County Coal Co.,
C. Erlich Coal Co.,
S. W. Little,
The Ella Coal Co.,
Panhandle Coal Company,
Ridgeway Bishop Coal Co.,
Morgan Moore & Baine Co.,

54 Auburn Coal Company
Acme Coal Company,
Assumption Coal & Mining Company,
Athens Mining Company,
Breese Coal Co.,
Black Diamond Coal Company,
Big 4 Wilmington Coal Co.,
E. Hakes,
Barclay Coal Company,
Big Muddy Coal Company,
Blake Albert,
Consolidated Coal Co. of St. Louis, Mo.,
Crerar, Clinch & Co.,
Litchfield M. & P. Co.,
James Lawes,
Moweauqua Coal M. & M. Co.,
Madison Coal Co.,
Massey Mine,
Hugh Murray,
Muddy Valley M. & M'fg. Co.,
Missouri & Illinois Coal Co.,
Carlinville Coal Co.,
Chicago & Kansas City Coal Co.,
Chicago Wil. & Vermillion C. Co.,
Chatham Coal Co.,
Carbon Coal Co.,
Canton Union Coal Co.,
Cantrell Coal Co.,
Citizens Coal Mining Co.,
Chicago-Glenburn Coal Co.,
DuQuoin Union Coal Co.,
Donk Bros. Coal Co.,
Devlin Coal Co.,
Economy Coal & Mining Co.,
Farmington Coal Co.,
W. E. Foley,
Gardner-Wilmington Coal Co.,
Greenwood-Davis Coal Co.,
Greenview Coal Co.,
Glendale C. & M. Co.,
Himrod Coal Co.,
Hillsboro Coal Co.,
Howarth & Taylor Bros.,
Horns Coalery,
Illinois Central Coal & Salt Co.,
Junction Mining Co.,
Jupiter Mining Co.,
Kelleyville Coal Co.,
Lumaghi Coal Co.,
LaSalle County Carbon Coal Co.,
Lincoln Coal Company,
Sangamon Coal Co.,
Springfield Iron Co.,
Skellett Coal Co.,
Sunday Creek Coal Co.,
Sorento Pros. & Mining Co.,
Starnes Coal Mining Co.,
Spaulding Coal Co.,
Springfield C. M. & Tile Co.,
Springfield Co-operative Coal Co.,
Springfield Coal Mining Co.,
Jos. Taylor,

Muren Coal & Ice Co.,
Montgomery Coal Co.,
Marquette Third Vein Coal Co.,
Pat Meehan,
Newsam Bros.,
Nilwood Carbon Coal Co.,
Odin Coal Co.,
O'Fallon Coal & Mining Co.,
Oak Hill Coal Co.,
Oakland Coal Co.,
Ogden Bros.,
Oglesby Coal Co.,
O'Gara & King Mining Co.,
Perry County Coal Mine,
Pana Coal Co.,
Riverton Coal Co.,
Royster & Ziegler,
Raymond Mining Co.,
Star Coal Co.,
Spring Valley Coal Co.,
Taylorville Coal Co.,
Trenton Coal Light & P. Co.,
Virden Coal Co.,
Henry Voge,
Westville Coal Co.,
T. J. Williams,
Willis Coal & Mining Co.,
Wolschlag Co-operative Coal Co.,
Isaac Wantling,
Wabash Coal Co.,
C. J. White,
Wilmington Star Mining Co.,
Whitebreast Fuel Co.,
Walnut Hill Coal Co.,
Woodside Coal Co.,
West End Coal Co.,
Williamsville Coal Co.,
Wilmington Coal M. & Mfg. Co.

Further complaining these plaintiffs allege and state that these plaintiffs do not know whether the operators above named have continued in business down to the present time or down to the time of the commencement of this suit or not. The defendants, The United Mine Workers of America, including District No. 21 know and have full and complete information concerning each union operator in the
55 states named and they well know the name of each one and the plaintiffs specifically allege that each union operator in said states entered into the conspiracy as alleged and the names and addresses of each of said operators are well known to the defendants herein, and have been known to the defendants all the time, and are now known to them.

Premises considered the plaintiffs pray that the above and foregoing be taken as section 21 of said complaint and further pray for a judgment as prayed in said original complaint.

ROGER B. HULL,
HENRY S. DRINKER, Jr.,
JAMES B. McDONOUGH,
Attorneys for Plaintiffs.

56 **Separate Answer of United Mine Workers of America.**

Filed in U. S. District Court July 7, 1917.

Comes now the United Mine Workers of America, and without waiving any rights under its motion to quash the summons and service upon it heretofore filed, presented and overruled by the court, and still insisting and relying upon said motion, and here protesting against being required to plead in this case, for its separate answer to plaintiffs' complaint filed herein, says:

I.

It denies that the Hartford Coal Company, the Mammoth Vein Coal Company, the Mammoth Vein Coal Mining Company, the Coronado Coal Company and the Prairie Creek Coal Mining Company, or either or any of them, were at the time of the appointment of the Receiver, or for many years, or any time, prior thereto, operating coal companies or engaged in the production, loading and shipment of coal for interstate trade and commerce from coal lands located in Sebastian County, Arkansas, or elsewhere.

57 It denies that prior to the year 1914 and before the commencement of the difficulties referred to in plaintiffs' third amended complaint, the Hartford Coal Company employed about 70 men, or that the Mammoth Vein Coal Company employed about 300 men, or that the Coronado Coal Company employed about 250 men, or that the Prairie Creek Coal Mining Company employed about 250 men, in connection with the production, loading and shipment of coal in or about their respective mines for interstate trade and commerce; denies that the value of the annual shipments and sale of coal by said mines respectively, were equal or exceeded the following:

The Hartford Coal Company	$50,000;
The Mammoth Vein Coal Company	120,000;
The Coronado Coal Company	175,000;
The Prairie Creek Coal Mining Co	120,000;
	465,000

Denies that 75 per cent of the coal shipped by each or either of said mines was sold and shipped to customers outside of the state of Arkansas in the ordinary course of interstate trade and commerce, but alleges the truth to be that if said plaintiffs produced and loaded for shipment any coal at said mines the same was by them and each of them, sold f. o. b.

the cars at the mines, and that none of said shipments were transported by said companies in interstate commerce, and denies that any of it formed any part of interstate commerce; denies that prior to April in the year 1914, the Mammoth Vein Coal Mining Company entered into a written contract with the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company or either of them wherein and whereby it agreed to operate and produce coal from mines of said Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company, or either of them, for and in behalf of said companies; denies that the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company were continuing to sell and ship the coal so produced from their respective mines as they had previously done; denies that the Prairie Creek
58 Coal Mining Company was selling and shipping, or was to continue selling and shipping coal mined by the Mammoth Vein Coal Mining Company from the mines formerly operated by the Prairie Creek Coal Mining Company; denies that the Mammoth Vein Coal Company was to continue to sell and ship coal produced by the Mammoth Vein Coal Mining Company from mines formerly operated by said Mammoth Vein Coal Company; denies that 75 per cent, or any other amount, of the output of each of said mines was produced, loaded and shipped by the plaintiffs, or either of them, for or to customers outside of the state of Arkansas in the course of interstate trade and commerce, denies that the Denman Coal Company, the Bache-Denman Coal Company, the Sebastian County Coal Company, the Mammoth Vein Coal Company, and the Mammoth Vein Royalty Company, or either or any of them, were financially interested in one or more of the operating companies either through contracts, the lease of coal lands on which said operating companies were working, or through the ownership of all or any of the stock of said operating companies, as alleged in plaintiffs' complaint.

It denies that about 75 per cent or any other quantity of the shipments of said operating companies were made by common carriers in interstate trains to points outside of the state of Arkansas, including the states of Oklahoma, Kansas, Nebraska, Texas and Missouri; denies that any of plaintiffs' employees in the conduct of interstate trade and business of plaintiffs were engaged in placing cars of interstate carriers in convenient places on the side tracks of said carriers for loading for interstate shipment; denies that any of plaintiffs' employees were engaged in loading cars of common carriers on side tracks with coal for shipment to points out-

side of the state; denies that any of plaintiffs' employees were engaged in placing cars so loaded for points outside the state of Arkansas in proper places on the tracks of
59 said carriers to be hauled by engines of carriers over the tracks of carriers, and attached to interstate freight trains for transportation to points outside the state of Arkansas; and further says that neither of the plaintiffs were engaged in the production, loading and shipment of coal in interstate commerce; denies that the ownership and operation of said mines, and the taking and producing of coal therefrom, was but one step in the interstate trade and business of said companies; denies that said ownership and operation of said mines and the taking and producing of coal therefrom formed any part of interstate trade and commerce of the plaintiffs or any of them; denies that the plaintiffs, or either of them, were dependent for the profitable conduct of their business upon the trade which they, or either of them, secured from customers outside of the state of Arkansas; denies that the plaintiffs or either of them owned and operated said mines, or any mines whatever in the state of Arkansas for the purpose of carrying on interstate trade and business; denies that plaintiffs or either of them would not have purchased or attempted to purchase, or operated or attempted to operate said mines, except for the purpose of carrying on interstate trade and business; denies that one of the principal assets of said companies was their good will, trade and business with customers outside of the state of Arkansas; and denies that companies or either of them employed agents and salesmen in other states to protect, preserve, build up or increase interstate trade, business or good will.

It denies that the district branches of the United Mine Workers of America, or the local unions of the United Mine Workers of America, or either or any of them, are a part of the United Mine Workers of America, or agencies created by said United Mine Workers of America to carry out the purposes and objects of said United Mine Workers of America, or to act with and for it in carrying out the general
60 combination and conspiracy in the restraint of interstate trade and commerce.

It admits that District No. 21 of the United Mine Workers of America is a district branch of the United Mine Workers of America, but denies that it has jurisdiction over all or any of the union mines or miners in the states of Arkansas, Oklahoma, and Texas, or that it had such jurisdiction over said mines or miners, or any of them, at the time of the alleged commission of the alleged wrongful acts complained of in

plaintiff's third amended complaint. It admits that the defendant local unions named in the complaint are affiliated with said District 21 of the United Mine Workers of America, but denies that they, or either of them, are subject to the laws of said District 21, as alleged in the complaint of plaintiff.

It admits that the local unions named in the caption to the complaint are unincorporated associations of the mine workers in the state of Arkansas, and further alleges that each of said local unions is a labor union not organized for profit, but for the mutual betterment of its members, and that it is not engaged in any business of any kind and has never been so engaged, and that neither of said local unions had legal entity apart from its membership. It admits that each of said local unions has a separate President and Secretary, but denies that process may be served upon either President or Secretary so as to bind the local union attempted to be brought into court, or to bring it into court independenly of its membership, and avers the truth to be that neither the President nor Secretary of any of the local unions named in the complaint has any authority either in law or by virtue of express or implied authority given him by the membership of the local union, to represent them, or plead for them, or bind them in anywise in this action. It denies that the members of each of said local unions are so numerous as to make it im-
61 practicable to make all of said members defendants.

It admits that John P. White is President of the United Mine Workers of America, but denies that because of the numerous members of said United Mine Workers America it is impossible to make each one a party defendant to this cause; it denies that it is, or has been, represented in District 21 by P. R. Stewart, formerly President, or Wm. McLachlin, a member of the Executive Board of District 21, or president thereof, or Edward Cunningham as Vice President or President, or Tom King, as member of said Executive Board; admits that James Mullen was a member of the Executive Board of the United Mine Workers of America, but does not know whether he was such member at the time of the alleged commission of the alleged wrongful acts complained of in the complaint, and therefore denies the same; it says that the said James Mullen is dead and has been dead for a long time; admits that Frank Hays is Vice President of said United Mine Workers of America and that Wm. Green is the Secretary and Treasurer thereof; it does not know whether they were such officers at the time of the alleged commission of the alleged wrongful acts; denies that the said James Mullen was

the agent of the United Mine Workers of America for the transaction of all business by said organization in the state of Arkansas during his life time, and alleges the truth to be that the said P. R. Stewart, Wm. McLachlin, Edward Cunningham, Tom King, James Mullen, Frank Hays and Wm. Green, had no authority, either expressed or implied, from the United Mine Workers, or from the membership of more than 4000,000 men composing said United Mine Workers of America, to represent them in the commission of a tort, or to bind said United Mine Workers of America for any wrongful acts they may have committed, if they did commit any such wrongful acts, or to represent the said United Mine Workers of America so that service of process upon them, or either of them, in service upon the said organization so as to bring it into court independently of its membership, or so as to
62 bind the members composing the said organization; or to authorize a judgment against them or either of them in this action. It denies that they, or either of them, sufficiently represent the United Mine Workers of America for the purpose of this action, or that the service of process upon them, and the trial of the suit in which they are parties, will constitute proper representation of the United Mine Workers of America. And it further avers the fact to be that it is an unincorporated labor union, not engaged in business for profit, or otherwise, but for the mutual betterment of its members and created for the objects and purposes set forth in its Constitution, which is hereinafter stated in this answer; that it has a membership of more than 400,000 persons of all Nationalities, residing in the Republic of Mexico, the United States of America and the Dominion of Canada, who are engaged in the craft and occupation of digging coal as laborers; that said association has an entity apart from the members who compose it.

It denies that the United Mine Workers of America and the other defendants described in the complaint divides all or any of the coal mines in the several states of the United States, into two classes, one class being called "Union" or organized mines, and the other class called "Non-Union" unorganized or open shop mines"; denies that the alleged former class are so called because they operate under an agreement with the United Mine Workers of America or one of its district branches to employ none but members of that union in or about the work of producing, loading and shipping coal and to comply with all the rules and regulations of the United Mine Workers of America and its district branches having jurisdiction over the respective mines in accordance with

their Geographical location; it denies that there is an
63 agreement between the United Mine Workers of America and the other defendants described in the complaint, to employ none but members of that union in or about the work of producing, loading and shipping coal, and to comply with all the rules and regulations of the United Mine Workers of America and its district branches having jurisdiction over the respective mines in accordance with their Geographical location; it denies that the latter named group of mines are designated as non-union, unorganized or open shop because they refuse to make an agreement with the defendants to employ only members of the United Mine Workers of America exclusively.

It denies that the United Mine Workers of America imposes any restrictions or unreasonable regulations upon all or any of the union or organized mines; it denies that said union or organized mines are conducted wastefully and inefficiently, or that the cost of production and selling price of coal is thereby unreasonably or unnecessarily enhanced; denies that coal produced at union mines cannot successfully compete with the products of non-union mines thruout the course of interstate trade and commerce; denies that the United Mine Workers of America, and those alleged in the complaint to be acting in conjunction with them, or anyone else, have divided all mines in the United States into two classes to be designated respectively as "union mines" or "non-union mines" in order that they may more readily prevent and restrain all interstate trade and competition in the products of the non-union mines; denies that in every, or in any, locality in which the United Mine Workers have succeeded in obtaining union recognition and enforcing the so-called closed shop, its so-called contract with the union operator, or any of them, has contained, and contains, clauses and provisions unreasonably restricting the employer in the operation of the property;
denies that all or any such contracts are in the posses-
64 sion of, or known to the defendants in this action; denies that the United Mine Workers of America imposes upon operators who employ union miners a restrictive provision and regulation known as the "closed shop" the result of which is to prevent the employer from availing himself of the services of valuable workmen or in producing a lack of discipline among the men actually employed, either of which is disastrous to the efficient organization of the business. It further denies that as a result of the alleged "closed shop" system the operating heads of the business are continuously compelled to devote a large portion of their time and energy

to negotiating contracts, endeavoring to settle disputes arising thereunder, and to conferences over disputes with union officials; denies that the union officials referred to in this action have no other business or function than to raise and discuss such questions; denies that the alleged "closed shop" system under the alleged contract with the union, results in practically precluding the operator from taking advantage of improved methods of mining intended to reduce cost; denies that such changes in mining methods are treated by union officials as a departure from the union and contract; denies that a change in the mining methods cannot be adopted without negotiating a new contract with the union requiring time, trouble and concessions which offset the economy to be produced by the proposed change of operation. It denies that said United Mine Workers of America imposes any [unreasonably] restrictions upon operators conducting mines at which union men are employed, by way of limiting the number of men to be employed in a working-place or prohibiting a given class of employees from doing any work except the specific and restricted employment provided for that class, or requiring the employment of unnecessary men, or requiring an ambitious employee from doing more than a given amount of work in a day or in an hour, with the purpose and result of reducing the efficiency of all employees to that of the
65 least efficient; denies that there are any other restrictions placed by the United Mine Workers of America in their written contracts between the Union and union operators, or as implied and construed by the union in its interpretations of such contracts, or as enforced by strikes or coercion, which prevent the operator from systematizing and ordering its operations and business in an efficient and economic manner without being subject to the continual interference and dictation by union officials as to how and when its mine should be conducted and operated; it denies that said United Mine Workers of America imposes any unreasonable restriction or regulations upon operators who employ union miners in the operations of their mines. It denies that it has for its object and purpose the complete domination of the labor element in the coal industry in the United States.

It denies that except for the anthracite coal mines in the state of Pennsylvania, practically the entire business of mining and shipping coal in the United States is done by what is known as bituminous mines located in the states of Washington, Wyoming, Utah, and Montana in the northwest, Illinois, Ohio, Indiana, and Michigan in the northern middle states, Iowa, Colorado, New Mexico, Kansas, Missouri, Oklahoma,

Arkansas, Texas, Kentucky, Tenneseee and Alabama, in the middle and southern states, and Pennsylvania, Virginia, West Virginia and Maryland in the eastern states; denies that each and every one of the bituminous mines in the several states named is engaged in or subject and liable to competition in the course of interstate trade from the mines in one or more of the other states above named; denies that nearly every one of said mines is subject to competition of the mines of each and every one of the several states above named in reaching or attempting to reach different markets of the United States in various industrial sections in different states through
66 the course of interstate trade made possible by transportation of common carriers from one state to another.

It denies that the mines which the plaintiffs claim to have been operating, and which they intend to operate, when in operation compete directly with the mines of Illinois, Kentucky, Alabama, New Mexico, Colorado, Kansas, Oklahoma, or other mines of Arkansas, for the Markets of Louisiana, Texas, Oklahoma. Nebraska, Kansas, Missouri, Iowa, and Minnesota, or subject to the competition of said mines in endeavoring to reach the various markets of other states through the channels of interstate trade and commerce. It denies that the mines of Illinois sell coal through the course of interstate trade and commerce to markets in Louisiana, Texas, Missouri, Nebraska, Kansas, and other states; denies that the plaintiffs referred to in the complaint as operating companies, sold coal through the course of interstate trade and commerce to purchasers in said markets and states, and denies that they thereby entered into interstate competition with the said mines of Illinois, in said states and others, or are subject to and affected by the interstate competition of said mines and others in many other states: denies that except for the alleged unlawful interference of the defendants as set forth in the complaint, each, or either, of said mines would have engaged in interstate competition with the said mines of other states in the year 1914.

It denies that all of the coal mines of Illinois, Ohio, Indiana, Wyoming, Michigan, Missouri, Iowa, Texas, Arkansas and Oklahoma, are union; admits that a part of the bituminous mines of Pennsylvania, Kentucky and West Virginia are union; denies that said mines of Colorado, New Mexico, Alabama, Virginia and Tennessee are non-union or unorganized.

It says that it does not know and has no sufficient in-
67 formation upon which to form a belief as to whether or not the annual output of bituminous coal in the United States is a little less than 5,000,000 tons, and therefore denies the same; denies that the state of Pennsylvania produces over one-third of the bituminous coal in the United States; denies that the states of Ohio, Illinois, Indiana produce over one-fifth of the bituminous coal in the United States; denies that the state West Virginia produces about one-seventh of the bituminous coal in the United States; denies that at least 60 per cent of the entire production of bituminous coal in the aforesaid states is produced by so-called union or organized mines; denies that if the [alleges] attempt of the United Mine Workers and those alleged to be working in conjunction with them, are successful in carrying out their alleged plans to unionize all the bituminous coal mines of Pennsylvania, West Virginia, Virginia, and Colorado, that about 90 per cent of the bituminous coal produced in the United States, which enters into interstate trade and commerce, will be coal produced by so-called union mines; it denies that there is a conspiracy, lawful or unlawful, existing between the United Mine Workers of America, or anyone else, to unionize all of the bituminous coal mines of Pennsylvania, West Virginia and Colorado; it denies that it has made any attacks, in either of the districts, upon non-union mines in furtherance of an unlawful conspiracy; or in an effort to monopolize interstate trade and commerce in coal in the United States; denies that it has attempted to monopolize the interstate trade in coal in the United States; and denies that it has created any such monopoly, and further avers the facts to be, that the said United Mine Workers of America is not engaged in interstate trade and commerce in coal, that its members throughout the Republic of Mexico, the United States and the Dominion of Canada, wherever they are engaged in digging coal, fol-
68 low the craft or occupation of mining coal for coal operators, furnishing only labor to such employers at stipulated prices by the ton, or by the day, as the case may be; that said members collect from the operator for the coal which they dig and the services they render about said mines; that such wages and compensation are earned by the members of said labor union for themselves individually to support themselves and their families.

It denies that the United Mine Workers of America and the other defendants named in the complaint, or any one else, now are or ever have been, engaged in an unlawful combination and conspiracy in unlawful restraint of trade and commerce in

coal among the different states of the United States. Denies that by means of any such combination or conspiracy it is unlawfully attempting to monopolize or has attempted to monopolize, or is monopolizing, such trade and commerce; denies that it has, in furtherance of any such combination and conspiracy, confederated, combined or conspired with anyone else to exclude or drive out of interstate trade and commerce, or to restrain or [prent] interstate trade and commerce in any or all coal produced, loaded and shipped by so-called non-union or unorganized mines; it denies that it has combined, conspired or confederated with anyone in an unlawful scheme to exclude or drive out of interstate trade and commerce, or to prevent interstate trade and commerce in coal produced, loaded and shipped by so-called non-union or unorganized mines, by hampering, preventing or interfering with the production, loading and shipment of coal for interstate commerce in any of the coal mining states by any so-called unorganized or non-union mines, so that it cannot become an object of commodity of interstate trade and commerce or enter into interstate competition with the products of so-called union or organized mines located in divers states; and it further says that if any such combination, conspiracy or confederation exists it knows nothing of it and is not a
69 party thereto, and has never been a party thereto; and it further says if any member or members, officer or officers of said United Mine Workers of America, are, or have ever been members of or parties to any such unlawful combination, confederation or conspiracy, they were not authorized by the said United Mine Workers of America to act for it, and such conduct is not an act, or acts, of said United Mine Workers of America, and said labor union is not bound thereby.

It denies that it is a party to an unlawful combination and conspiracy in restraint of interstate trade and commerce; denies that one of its objects is to monopolize the trade or occupation of mining coal for the members of the United Mine Workers of America, and thereby prevent the employment of non-union men in any part of the United States at the trade or craft of mining coal or to prevent the products of the labor of non-union mines from becoming objects or commodities of interstate trade and commerce; or to compel those employed in the occupation of mining coal in non-union mines to abandon the trade or vocation of coal mining or to become members of the United Mine Workers of America; denies that its object is to secure a monopoly and unification in control and management so far as labor is concerned, of all competing

mines in all parts of the United States. It states the facts to be, that no person is excluded from membership in said labor union on account of race and color, but that every person engaged in mining coal and working around coal mines is eligible to membership in the United Mine Workers of America, and may become a member if he so desire.

It denies that it is a party to an illegal scheme, combination or conspiracy to suppress and destroy the business of non-union or unorganized mines whose products enter into interstate trade; denies that it is a party to any illegal scheme or conspiracy to prevent any mining company from engaging in the business of selling coal for interstate trade, as an
70 unorganized mine, or to prevent any of the so-called union or organized mines from commencing operations as a non-union or unorganized mine, or to prevent by suppression, obstruction or destruction, the business of any of the independent and competing mines in the several states or in any of the states which are operating or may hereafter operate, on a non-union or unorganized basis, or to monopolize interstate trade and commerce for union coal produced under the domination of the United Mine Workers of America; and denies that it dominates the union coal or the production thereof at the mines employing union miners. It denies that it maintains the price of union coal interstate commerce by protecting it from interstate competition of coal mined by non-union mines, and further says that the said labor union does not fix the market price to be paid fo rcoal, or maintain said price when so fixed, but that said market price is fixed by coal operators and coal selling agents, and that the said organization and its members are not engaged in selling coal, either as mine operators, agents, or otherwise.

It denies that it is a party to an unlawful combination or conspiracy to dominate and control separate and competing mines in different states, which in the absence of said unlawful combination, would be engaged in interstate trade and commerce. Denies that it is a party to any combination to destroy or prevent interstate shipments of coal by all or any of the mines in any of the coal mining states, or to prevent any coal not produced by union mines from becoming an object of interstate commerce or entering into interstate competition with the products of so-called union mines. Denies that it is a party to any agreement or understanding between it and the proprietors of union mines to the effect that it, the
71 said proprietors and others acting in conjunction with them, will unlawfully protect interstate trade and busi-

ness of said union mines from the competition of unorganized mines by employing all the means available to organized labor to prevent the production, loading and shipment of coal for interstate trade and commerce my unorganized mines.

It denies that it has in furtherance of any such unlawful combination or conspiracy to unduly restrain interstate trade and commerce, or to exclude the products of unorganized mines and non-union miners from interstate trade and commerce, working through its district organization, or otherwise, ordered and coerced strikes of employees employed by un-organized mines in different states, and by violence, intimidation, mobs or riots, prevented the employment of any miners in said mines for production, loading or shipment of coal for interstate commerce; or that it has by dynamite, arson or other unlawful means, destroyed the facilities of said unorganized mines for producing, loading and shipping coal for interstate commerce, or that it has hampered, interfered with, prevented or attempted to unduly enhance the cost of producing, loading and shipping coal by said unorganized mines for interstate commerce so that it would no longer be marketable as an article or commodity of interstate trade and commerce in competition with union coal. It further says that if such property has been destroyed or damaged, or injured, or the facilities for producing, loading and shipping of coal for interstate commerce, hampered, interfered with or prevented, or the cost of producing, loading or shipping coal by said unorganized mines for interstate commerce has been unduly enhanced so that it would no longer be marketable as an article or commodity of interstate com-
72 merce in competition with union coal, the said United Mine Workers of America is not and was not, a party to said unlawful acts, but that whoever committed said acts were acting for themselves and not for the United Mine Workers of America, and said labor union is not bound by such acts. It denies that any of the alleged unlawful acts referred to in the complaint were done or carried out in furtherance of any combination or conspiracy to unduly and directly restrain interstate trade and commerce with the intent, purpose or effect, as set forth in the complaint, and denies that said United Mine Workers of America was a party to, or connected with, any such unlawful acts; and denies that any person had authority to act for said labor union in the commission of said unlawful acts; denies that it was a member of or a party to any combination or conspiracy or arrangement, having for its purpose the inducing and forcing of persons and corporations formerly engaged in interstate

trade as non-union mines to refrain therefrom until such times as they would carry on said business as union mines dictated by said combination and conspiracy.

It denies that in furtherance of any combination and conspiracy to restrain interstate trade and commerce in bituminous coal, or to prevent any non-union coal from entering into interstate trade and commerce, the United Mine Workers of America, its district branches, or either or any of them, have at any time since 1898, entered into negotiations, understandings and agreements, with the operators of union mines in the states of Ohio, Illinois and Indiana or other states, wherein and whereby it was understood and agreed that in consideration of said operators agreeing to or continuing to operate union mines, the said United Mine Workers of America, or the other defendants named in the complaint, or any one working in conjunction with them, would by strike, or any other unlawful means, prevent the production or shipment of bituminous coal by so-called non-union
73 and unorganized mines whose products come into interstate competition with the products of union mines through the course of intersate trade and commerce. Denies that it was a party to any combination, conspiracy, agreement, or understanding which required the said United Mine Workers of America and its said branches, either or any of them, to use all means in its power, or any means whatever, to prevent interstate commerce in bituminous coal by all unorganized mines, or by all competitive mines which should thereafter become non-union or unorganized; and denies that it has committed any acts in furtherance of such a combination and conspiracy to interfere with and destroy the business of the plaintiffs, as alleged in the complaint; it denies that any of the acts complained of in said complaint were the acts of the said United Mine Workers of America, done in pursuance of any illegal arrangement, contract or understanding between the United Mine Workers of America and union operators, to destroy and prevent interstate trade and commerce in bituminous coal from unorganized fields by destroying or interfering with the facilities of said unorganized mines for the production and shipment thereof. It further states, if the plaintiffs suffered damages on account of the acts alleged to have been committed, and claimed to be unlawful, as set forth in the complaint, they were not the acts of the United Mine Workers of America, but were the acts of some one else and that the said United Mine Workers of America is not bound by the acts of the persons committing

said alleged wrongs, because said acts were not committed by authority of the said United Mine Workers of America and it is in no wise responsible therefor. It denies that it entered into the combination and conspiracy alleged to have been formed by it and certain coal operators in the year 1898, or at any other time, and denies that it has joined in such a combination or conspiracy or been a party
74 thereto from the year 1898 down to and including the year 1916. It denies that any such combination or conspiracy has existed between it and all or any of the coal operators in the states of Illinois, Ohio, Indiana, or other states where the members of the United Mine Workers of America are employed to labor in and about coal mines; denies that the United Mine Workers of America controls the labor situation in said states. It denies that it knows the names of the operators in the states of Illinois, Ohio, Indiana and other states, who are alleged to have, in connection with the United Mine Workers of America, formed the combination and conspiracy in 1898, or who have continued said conspiracy and combination down to the present time; denies that it knows the names of the operators in said states whom the plaintiffs claim entered into the negotiation, understandings and agreements with the United Mine Workers of America in the states of Ohio, Illinois, Indiana, or other states, to the effect that in consideration of said operators agreeing to or continuing to operate union mines the said United Mine Workers of America and those working in conjunction with them, would, by strikes and other unlawful means, prevent the production and shipment of bituminous coal by all non-union and unorganized mines in other states whose products come into interstate competition with the said union mines through the course of interstate trade and commerce. And it further states that if such contracts or agreements were ever made, entered into or existed it knows nothing of them or any of them, and has been unable to find them or any of them, and it denies that the plaintiffs do not know the names of the operators in said states entering into such agreements, combinations, conspiracies or understandings, if there were such. It further states that it has a general knowledge of the coal operators employing union labor in the districts where said labor union is recognized by coal
75 operators, but that it has no knowledge whatever of any such agreements, understandings or conspiracies as referred to and described by the plaintiffs in their complaint, and therefore denies that any such conspiracy, understandings or agreements exists or ever existed. It denies

that any such agreement has been interpreted by the United Mine Workers of America and the union operators as an obligation on the union miners to work in harmony for the benefit of the union operators and the union miners for the purpose of excluding from interstate commerce the production of non-union labor. It denies that it is a member of or a party to any such agreement, combination or conspiracy as is alleged in the complaint with the Waverly Coal & Coke Company, or any of the other individuals, firms, partnerships or corporations named in Section 21 of plaintiffs' third amended complaint, or with anyone else, or that it has ever been a member of or a party to any such conspiracy or agreement, or that it has ever committed any acts in furtherance of any such combination or conspiracy, or that anyone else has ever committed any act for it in furtherance of said combination, conspiracy or understanding.

It denies that in furtherance of an illegal combination, and conspiracy to restrain and prevent interstate trade and commerce in bituminous coal, or to drive non-union coal out of interstate trade and commerce, the United Mine Workers of America and those working in conjunction with it, did at various times since 1898 embark and engage upon a general campaign and crusade to prevent non-union bituminous mines in the state of Pennsylvania from engaging in interstate trade and commerce in non-union coal; denies that through strikes, violence, intimidation and threats, it prevent-
76 ed the employment of any operatives for the production, loading and shipping of coal, or by the use of fire and explosives it destroyed the facilities of said mines for the production, loading and shipment of said coal; denies that in 1911 the United Mine Workers of America, and those acting in conjunction with it, did undertake and did employ similar means in furtherance of an unlawful design against non-union mines in Westmoreland & Irwin Districts in the state of Pennsylvania, known as the Westmoreland & Irwin mines, in order to prevent said mines from engaging in interstate trade and commerce in non-union coal. Denies that in furtherance of such illegal combination and conspiracy to restrain trade, among the several states, in coal, the United Mine Workers of America and those acting in conjunction with it, did in the year 1913, enter into a general campaign and crusade against non-union mines in the state of Colorado, and by strike, violence, threats and intimidation, prevent said mines from procuring further employes to produce, load or mine coal for interstate trade and commerce, or that the said

United Mine Workers of America, or anyone for it, did by the use of fire and explosives destroy the facilities of said mines for the production, loading and shipment of coal for interstate trade and commerce, in order thereby to destroy interstate trade and commerce in non-union coal. Denies that at various times, or any time, since 1906 in furtherance of an unlawful scheme to restrain trade in bituminous coal among the several states, the said United Mine Workers of America and those acting in conjunction with it, did engage in a general campaign and crusade to destroy interstate trade and business of non-union bituminous mines in West Virginia, and by strikes, violence, threats, and explosives, or by preventing employment of other operatives to carry on said work, destroyed the facilities of said mines for
77 the production, loading and shipment of coal for interstate trade and commerce. Denies that said United Mine Workers of America and those working in conjunction with it, have from time to time, or at any time, employed any means to destroy the business of non-union companies in Pennsylvania, West Virginia, Colorado and other states, in order to prevent them from shipping non-union coal for interstate trade and commerce.

It denies that early in the year 1914, all of the plaintiffs in this action decided that the operating companies should be conducted on a non-union or open shop basis, without discrimination against any employee on the ground that he was or was not a member of any union. Denies that about the middle of March, 1914, the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company closed down their said mines and discontinued operation as union mines preparatory to reopening on the non-union or open shop basis in the month of April 1914; it admits that the Hartford Coal Company had not been in operation for over a year previous thereto but denies that it was the plan and intention of said company to also reopen upon the non-union or open shop basis as soon as it became expedient to do so, or at least in the summer of 1914. It admits that the Coronado Coal Company continued operation as a union company until April 14, 1914, but denies that its employees were ordered out on a strike by the United Mine Workers of America, either in furtherance of an unlawful conspiracy, or otherwise. Denies that it was the intention of the said Coronado Coal Company and the persons and corporations financially interested in it, that said company should be placed upon a non-union or open shop basis as soon as expedient, or at

least by the summer of 1914. It denies that said plan of operation of said mines was in part to be carried out
78 by having the Mammoth Vein Coal Mining Company operate the mine of the Mammoth Vein Coal Company and the Prairie Creek Coal Mining Company, under its written contract described in paragraph marked "4" in the complaint. Denies that there was any such written contract.

Denies that in the year 1914, either or all of the plaintiffs had made preparations to do a large and profitable business with dealers in coal in other states, and to renew, manage and conduct said interstate trade and commerce upon a non-union or open shop basis. Denies that the market outside of the state of Arkansas was such as to warrant the full belief that the ensuing season would be a profitable one to said companies; and denies that said plaintiffs intended to sell their coal, if any was produced, outside of the state. Denies that in the year 1914 the United Mine Workers of America and those acting in conjunction with it, undertook to destroy the business of said operating companies; denies that any of said operating companies were engaged in carrying on interstate trade or business, or enjoying an interstate good will, or were shipping non-union coal to customers in other states in the course of interstate trade and commerce. Denies that the rest of said operating companies were prepared to commence and renew their interstate trade and business, or were intending to renew interstate trade and business upon a non-union basis.

It denies that at all times, or any time, after April 1, 1914, it or anyone acting in conjunction with it, in furtherance of an unlawful conspiracy, as alleged in the complaint, knew of the alleged intentions, plans and costly preparations of said companies, persons or corporations in control thereof, to operate each and every one or any of said mines, in the future upon the open shop or non-union basis, or to sell and ship non-union coal in interstate commerce in competition with union mines, and denies that any of the acts alleged to
79 have been committed by it; and others acting in conjunction with it, in furtherance of the alleged conspiracy, were done by it, or by anyone acting in conjunction with it, or by anyone acting for it, or were done in furtherance of said unlawful scheme and conspiracy, or to prevent interstate trade and commerce in bituminous coal produced, loaded, or shipped by so-called non-union or open shop mines.

It denies that in April 1914, and at various times, or any time, thereafter, in furtherance of plans to have all of the plaintiffs engaged in interstate trade as non-union mines, some of said operating companies began to operate their mines on an open shop basis; denies that from time to time in the year 1914, said operating companies employed large numbers of men, or any men whomsoever, who were engaged in the work of mining, loading and shipping coal for interstate trade and commerce; denies that said operating companies were preparing to employ additional miners and open additional mines for the purpose of carrying on interstate trade and commerce on a still larger scale, or preparatory to having all of said operating companies do likewise; denies that it, either by itself or acting in conjunction with others, in furtherance of the alleged combination and conspiracy to drive non-union coal out of interstate trade and commerce, or to restrain and prevent interstate trade and commerce in coal, or in furtherance of any understanding with the proprietors of union mines competing with said mines, combined or conspired together in furtherance with said conspiracy to ruin and destroy the interstate trade and commerce of said mines, or to prevent them from commencing or engaging, or continuing therein, by interfering with and preventing the production loading and shipment of coal for interstate trade and commerce by said mines; It denies that it further-
80 ance of said combination and conspiracy, it, or anyone acting for it, by threats, intimidation, violence and unlawful assemblies, drove and frightened away all of the men employed by plaintiffs at the mines at the work of mining, loading and shipping coal for the interstate trade and commerce or those men employed at the work of placing cars of interstate carriers in the proper place on the tracks of said carriers where they could be loaded with coal for shipment outside of the state; or those men employed in loading said cars of common carriers, or those who placed the cars after loading upon the proper part of the tracks of the common carriers where they could be taken up by the interstate trains of said carriers for transportation to points outside of the state; denies that by threats, violence, murder, mobs and riots, it, or anyone acting for it, or in conjunction with it, prevented the said companies from employing or obtaining for employment any other operatives to load said cars of interstate carriers or to manipulate and place said cars before and after loading for interstate transportation in their proper place on the tracks of the carriers, or by the same unlawful methods, prevented said plaintiffs from employing or obtain-

ing for employment any miners whomsoever to perform any of the work of mining, loading or shipping of coal for said mines; denies that by the use of fire, dynamite or other explosives, it or anyone acting for it, destroyed the structure, or other valuable facilities of said mine for the production, loading and shipment of coal for for interstate trade and commerce, or destroyed the cars of interstate carriers which were stationed at or about the mines waiting to be loaded with interstate shipments, or destroyed cars of said carriers and shipments already loaded thereon to be hauled away by interstate carriers for transportation to consignees outside of the state of Arkansas, or destroyed the business of other concerns in which the same persons were interested, in order to impoverish said persons or to prevent their carrying on
81 said non-union coal mining business. It denies that by any unlawful acts committed by it, or anyone for it, or anyone acting in conjunction with it, any of the plaintiffs were prevented from engaging or continuing to engage in interstate trade and commerce. Denies that it well knew or intended that the destruction of the coal mines of said operating companies and the interference with the operation thereof would result in the destruction of the interstate trade and commerce of said plaintiffs, and denies that it had anything to do, either directly or indirectly, with the destruction of said coal mines or the facilities for operating them.

It denies that it was a member of a contract, combination, agreement, conspiracy or understanding with the persons named in the complaint, or anyone else, to injure or destroy the interstate trade or commerce of the plaintiffs, or of coal operators engaged in the production, shipment and sale of coal produced at non-union mines, and denies that it acted in conjunction with any of the persons referred to by plaintiffs in their alleged paragraph number "26" in their complaint, or with any other persons, firms, partnerships or corporations.

It denies that it committed any of the alleged wrongful acts or that anyone committed any of the alleged wrongful acts for it, on April 6, 1914, July 17, 1914, July 18, 1914, July 19, 1914, July 20, 1914, or at any other time. Denies that it, or anyone for it, frightened away from plaintiffs' mines, J. T. Allison or any one of the other persons which plaintiffs claim were frightened away from said mines, as set forth in paragraph referred to as Section 26 in plaintiffs' complaint.

It denies that it, or anyone acting for it, prevented any person from entering or continuing in the employ of said companies by putting them in fear of harm or violence to
82 their person or property, or otherwise. It denies that except for the alleged unlawful combination and conspiracy of the defendants and the acts alleged to have been done in furtherance thereof, the said Hartford Coal Company, the Mammoth Vein Coal Company, the Coronado Coal Company, the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Mining Company, would have, long prior to the commencement of this action, secured employes to man their mines and engage in the work of producing, loading and shipping coal for interstate trade and commerce, and denies that said companies, or either or any of them, would have shipped coal to the amount of $600,000 annually in the aggregate, or would have realized a large profit thereon. It denies that by reason of any of its alleged acts, or of the alleged acts of anyone alleged to have been acting for it, or in conjunction with it, or in furtherance of said alleged combination and conspiracy in restraint of interstate trade and commerce, or the acts done in furtherance thereof to injure and destroy the business of said companies, the said plaintiffs have suffered loss and injury to their said business and property in the sum of $740,689.42, or any other sum whatever.

It denies that the Prairie Creek Coal Mining Company has suffered damages to its business and property to the extent of $281,057.50, as set forth in the complaint or any other sum. It denies that the Mammoth Vein Coal Company has suffered damage to its business and property in the sum of $117,-210.34, or any other sum, as set forth in the complaint. Denies that the Mammoth Vein Coal Mining Company has suffered damage to its business or property in the sum of $192,-953.44, or any other sum, as set forth in the complaint. Denies that the Coronado Coal Company has suffered damage to its business and property in the sum of $89,696.72, or any other sum, as set forth in the complaint; denies that the Hartford Coal Company has suffered damage to its business or property in the sum of $28,214.97, or any other sum,
83 as set forth in the complaint. Denies that Sebastian Coal Company has suffered damage to its business and property in the sum of $17,661.10, or any other sum, as set forth in the complaint. Denies that the Mammoth Vein Royalty Company has suffered damage to its business and property in the sum of $4,000.00 or any other sum as set forth in the complaint; denies that the Bache-Denman Coal Company has suffered damage to its business or property in

the sum of $4,245.15, or any other sum, as set forth in the complaint. Denies that the Denman Coal Company, has suffered damage to its business or property in the sum of $5,650.00, or any other sum, as set forth in the complaint.

It denies that any contractual relations existed between the Prairie Creek Coal Mining Company and the Mammoth Vein Coal Mining Company, so that the damages alleged to have been suffered by the Prairie Creek Coal Mining Company was also suffered by the Mammoth Vein Coal Mining Company. Denies that any contractual relations existed between the Mammoth Vein Coal Company and the Mammoth Vein Coal Mining Company so that the damages alleged to have been suffered by the Mammoth Vein Coal Company was also suffered by the Mammoth Vein Coal Mining Company, and denies that either of said companies has suffered any damages, either in the sum of $56,543.98, or any other sum, as stated in the complaint.

The United Mine Workers of America denies that it was a member of or a party to a conspiracy or unlawful contract, combination or conspiracy in restraint of trade and commerce among the several states of the United States, in violation of the Anti Trust Act of Congress July 2, 1890; denies that under the provisions of said act the plaintiffs are entitled to recover of and from the United Mine Workers of America any damages prescribed by said act of congress in the sum of $2,222,068.26, or any other sum whatever, or costs or attorney fees as provided in said act.

84 The said United Mine Workers of America states that it knows nothing whatever concerning the funds alleged to be to its credit in the American National Bank of Fort Smith, Arkansas, and states that it has nothing whatever to do with said money. It says that it receives dues which are voluntarily paid by its members to it; that it has no property and receives only such monies as are voluntarily paid to it by its members. It says that it has no contract with the coal operators in District 21, or elsewhere, whereby it is due large sums of money, or any other sums whatever.

It denies that it is under contract with the Central Coal & Coke Company, the Western Coal & Mining Company, the Bolin-Darnall Coal Company, the Branner Coal Company, or other coal companies by which it is to receive large sums of money from its members. That said dues are received from its members to be used for the mutual betterment of the members of the organization. It states that a large number of its

members reside in the state of Arkansas; that it has no [existance] or entity apart from its membership. Denies that it is about to remove a material part, or any part, of its property out of the state, and denies that there is any ground for attachment or garnishment against it, as shown in plaintiffs' complaint.

Wherefore, the said United Mine Workers of America having fully answered, prays judgment and all proper relief.

II.

And the said United Mine Workers of America, in answer to the second count of plaintiffs' complaint, alleges the facts as set forth in the first count of its answer above, makes them a part of this paragraph as if each and every one of the allegations in said paragraph one was specifically set forth in this paragraph and further says, that it denies that it
85 is, or has been, a member of or a party to a conspiracy, combination, contract, agreement or understanding, with the other defendants named in the complaint, or with the corporations, individuals, firms or persons referred to in the complaint, to restrain or interfere with the production, loading and shipment or sale of coal in interstate trade or commerce. It denies that it formed, or was a party to the formation of any conspiracy referred to in the first or second count of plaintiffs' complaint, with the unlawful or wilful purpose or design of preventing the plaintiffs from operating their mines or of injuring or destroying said mines, or the business of plaintiffs, as set forth in the complaint. Denies that it or anyone for it, has in anywise injured or destroyed the plaintiffs property or business or caused them to suffer damage in the sum of $740,689.42, or any other sum, and denies that plaintiffs are entitled to recover that sum, or any other sum, as actual damages on account of said [alleges] wrongful acts; denies that it is entitled to recover a double sum as punitive damages, or a total sum of $2,222,068.26, or any sum whatever, on account of this action.

Wherefore, the said United Mine Workers of America prays judgment and for other and proper relief.

III.

And the United Mine Workers of America, further answering herein, makes paragraph No. 1 a part of this paragraph, the same as if every word in said paragraph was copied specifically in this paragraph, and further says:

86 That the United Mine Workers of America is a labor union composed of more than 400,000 working men in the United States, Canada and Mexico, engaged in the digging of coal and organized in an unincorporated society; that it has no legal entity apart from its membership and is not engaged in business for profit anywhere, but has for its objects and purposes shorter working hours for its members, reasonable compensation for services rendered and the betterment of general working conditions for its members, as shown by its constitution, which was in full force and effect, and under which it has operated from 1898 until the present time, and which is as follows, to-wit:

(Note By Clerk of District Court: The Constitution of the United Mine Workers of America was introduced in evidence and is set forth in the Bill of Exceptions at pages 299 to 343 inclusive of the transcript. The copy of said Constitution set out in the Answer is therefore omitted here.) (Marginal Pages 299 to 343 of this printed record.)

87 That no member or members, officer or officers, of said United Mine Workers of America is authorized or empowered to act for or in behalf of, bind or represent it, beyond the scope of the provisions and terms of said constitution. That if any member or members, officer or officers, of said United Mine Workers of America has conspired with any person or persons, become a member or members of, or a party or parties to, a conspiracy, combination, agreement, contract or understanding, with any person or persons, firms or corporations, either named in the complaint or not named therein, to destroy the business or property of non-union mines, or to interfere with the production, loading, shipment or sale of coal produced from non-union mines, or have committed any act or acts in furtherance of any such conspiracy, agreement, contract or understanding, it is beyond the scope and provisions and terms of said constitution, and is therefore not binding upon said labor union, and it pleads the terms and provisions of said constitution and the matters and things set forth herein as a complete bar to plaintiffs' right to recover against it herein.

IV.

And the United Mine Workers of America, further answering herein, says that it makes paragraph No. 1 herein a part of this paragraph, the same as if every word in said paragraph No. 1 was specifically repeated herein, and in addition thereto says:

That the plaintiffs, and each of them, were parties to and participated in each and every contract and agreement between the union operators and the United Mine Workers of America made in District 21, and the defendant locals, during the years 1903 to 1914, both inclusive, and that
88 said plaintiffs, as union operators, engaged and participated in, promoted and were parties to, the conspiracies alleged in said complaint, if there was such conspiracies, and by reason of said contracts, are not entitled to recover any damages suffered by them, or either of them, resulting from said conspiracy.

V.

And the United Mine Workers of America, further answering says, that it makes paragraph 1 of this answer a part of this paragraph, the same as if every word in said paragraph 1 was specifically repeated herein, and in addition thereto says, that the United Mine Workers of America is a voluntary, unincorporated association, not registered under any trade union laws, not engaged in any business, and that it has no legal entity apart from its members; that it is a labor union composed of more than 400,000 men who are engaged in the occupation or craft of laboring in and about coal mines in the Republic of Mexico, United States of America, and Dominion of Canada, having for its objects and purposes the mutual betterment of the conditions of its members by way of procuring shorter working hours for its members and the betterment of general working conditions. That its members labor for themselves and collect for their labor and that no part of the compensation for said labor belongs to the United Mine Workers of America; that the only funds it receives are funds paid in by the members in the form of dues, paid monthly by each member, to be used as provided by the constitution of said association, for the mutual betterment of the members. That the membership of said labor union is composed of people of all Nationalities; that its membership is a shifting one, people becoming members daily and people withdrawing their membership daily. That every per-
89 son performing services at or about the coal mines is eligible to be a member of said labor union, and no such person is prohibited from joining said association if he so desires; and the said United Mine Workers of America says that as such association it cannot be sued as such association in this action, and it pleads such fact in bar to plaintiffs' right to recover herein.

VI.

The United Mine Workers of America further answering herein makes paragraph 1 of this answer a part of this paragraph the same as if said paragraph was specifically repeated in this paragraph, and further says, that there is a misjoinder of parties plaintiffs and of causes of action in this action, for the reason that each of said plaintiffs is a separate and distinct corporation and that neither of said corporations have any community of interest or rights in common with the other in the subject of the action and in the money sued for; that if either of said plaintiffs has suffered any damages on account of the alleged wrongs, or is entitled to recover anything whatever on account of the matters stated in the complaint, such right to recover is personal to the plaintiffs so entitled to recover and neither of the other plaintiffs have any interest therein that would entitle all of the plaintiffs to sue in one action herein. And the United Mine Workers of America plead that there is a misjoinder of parties plaintiffs and of causes of action, and pleads such facts as a bar to the right of either of the plaintiffs to recover herein.

VII.

And the United Mine Workers of America, further answering herein, says, that it makes paragraph 1 of this answer a part of this paragraph, the same as if it was specifically repeated herein and in addition thereto says:

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It is not engaged in selling or transporting coal in any form or manner whatever, and that its members are not so engaged. That said association has no business whatever, but that its members employed in and about coal mines and perform labor thereat, that the object and purpose of said association is to obtain shorter working hours for its members and reasonable compensation for services rendered by them, and for the betterment of the working conditions of said members. That if the price of coal is enhanced by reason of increased cost of producing the same by paying better wages for the production thereof, such increased price does not affect the market for coal so as to make the members of said association guilty of violating the provisions of the Sherman Anti Trust Law, or the provisions of the Clayton Anti Trust Law, and is not an interference with interstate commerce, and it pleads such facts as a bar to the right of either of the plaintiffs to recover herein.

VIII.

The United Mine Workers of America, further answering, says it makes paragraph No. 1 of this answer a part of this answer the same as if it was specifically repeated herein, and in addition thereto says:

That it is not engaged in any business whatever, as it is an unincorporated association or labor union, organized for the purpose of obtaining shorter working hours for its members, reasonable compensation for services rendered by its members, and the betterment of general working conditions for its members; that it is not engaged in the sale or transportation of coal, and that its members are not so engaged, but that its members are engaged in the craft or oc-
91 cupation of mining coal and that the work of mining coal and performing labor in and around the coal mines is not a subject of monopoly under the Sherman Anti Trust Law and under the Clayton Act, and it pleads such facts as a bar to the right of either of the plaintiffs to recover herein.

IX.

And the United Mine Workers of America, further answering herein makes paragraph No. 1 a part of this paragraph the same as if every word in the said paragraph 1 was copied specifically in this paragraph and in addition thereto says:

That District 21 of the United Mine Workers of America is a voluntary, unincorporated association, or labor union, composed of about 25,000 working men in the state of Arkansas, Oklahoma and Texas, engaged in the digging coal for themselves at and about the coal mines in said states; that said District 21 has no legal entity apart from its membership and is not engaged in business for profit anywhere, but has for its objects and purposes, shorter working hours for its members, reasonable compensation for service rendered, and the betterment of general working conditions for its members; that it has a separate constitution which has been in full force and effect and under which it has operated for at least fifteen years before the beginning of this action, which said constitution is as follows to-wit:

(Note by Clerk of District Court: The Constitution of District No. 21 United Mine Workers of America was introduced in evidence and is set forth in the Bill of Exceptions at pages 3525 to 3560 inclusive of this transcript. The copy of
92 said Constitution set out in the Answer is therefore omitted here.) (Marginal Pages ..... to ..... inclusive of this printed record.)

That no member or members, officer or officers, of said District 21, is authorized or empowered to act for or in behalf of said District 21, bind or represent it, beyond the scope of the provisions and terms of said constitution; that said District 21 and the officers and members thereof have no authority to act for represent, or bind the said United Mine Workers of America in any manner or matter whatever; that if any member or members, officer or officers of said District 21 has conspired with any person or persons or becomes a member or members of, or party or parties to a conspiracy, combination, agreement, contract or understanding with any person or persons, firms or corporations, either named in the complaint or not named therein, to destroy the business or property of non-union mines, or to interfere with the production, loading, shipment or sale of coal produced from non-union mines, or committed any act or acts in furtherance of any such conspiracy, agreement, contract or understanding, it is beyond the scope and provisions and terms of said constitution, and is therefore not binding upon the said District, nor binding upon the United Mine Workers of America, and it pleads the terms and provisions of said constitution, and the matters and things set forth herein, as a complete bar to plaintiffs' right to recover against it herein.

X.

The United Mine Workers of America further answering herein, says that it makes paragraph 1 a part of this paragraph the same as if every word in said paragraph was
93 copied specifically in this paragraph, and further says:

That each and every local union named as a defendant in plaintiffs' complaint, is an unincorporated labor union, composed of a large number of individuals who are engaged in mining coal and working in and about coal mines at or near where said local unions may be located; that said local unions have no authority or power to act for or bind the United Mine Workers of America in any manner or for any purpose whatever; that neither the officers or members of said local unions have any authority or power whatever to act for, represent or bind the said United Mine Workers of America in any manner or for any purpose whatever; that if any of said local unions, or the officers or members thereof, have conspired with any persons or corporations to interfere with the mining, loading and shipment of coal in interstate commerce, or otherwise, such acts are not the acts of the said United Mine Workers of America, and it pleads such matters

as a complete bar to the right of either of the plaintiffs to recover herein.

Having fully answered, the United Mine Workers of America prays judgment, and for all proper relief herein.

HENRY WARRUM,
COVINGTON & GRANT,
Attorneys for Defendants.

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94 Separate Answer of Individual Defendants.

(Filed in U. S. District Court July 7, 1917).

Come now the defendants, P. R. Stewart, Wm. McLachlin, Jess Edwards, Charley Farley, Joe Overman, O. A. Brooke, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendrix, Jim Lee, George Burnett, Pink Dunn, Pete McMullen, John Mastell, James Slankard, M. B. Appleby, Bruce Jordan, Ed Baker, H. S. Treadway, G. G. Daniels, John Turnipseed, Lewis Evans, Wm. Rodden, Joe Kerbellas, Joe Lanier, Charles Blackburn, Ed Kehee, Albert Hunter, Rich Handlin, Scott Adkins, Frank Petty, Claude Litchford, John Litchford, Otto Altman, Carey Crumpton, Wm. Price, Pete McMullen, Jr. John Murray, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Derwood Warren, Harry Birkett, Bud Williams Brock Smith, Willis Congo, Leslie Congo, Bud Congo, Charles McCowen, J. W. Howard, John T. W. Davis, Edward Cunningham, Tom King, John P. White, Jake Thompson, Jim McNamara, Whit Miller, Joe Coneoda, B. Trout, and Joe Assola, and each said defendant answering separately for himself the complaint of the plaintiffs filed herein, says:

I.

He adopts paragraphs I, II, III, IV, VI, VII, of the answer filed in this case by the United Mine Workers of America, as for his answer, the same as if each of said paragraphs of said answer was copied word for word herein, and makes each of said paragraphs a part of this answer, and relying upon each and every said paragraph of said answer as a complete defense and bar to the right of each plaintiff to recover herein.

95 Wherefore, having full answer herein each defendant named herein prays that he have judgment in his behalf and for all other proper relief.

HENRY WARRUM,
COVINGTON & GRANT,
Attorneys for Defendants.

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96 Separate Answer of District No. 21, United Mine Workers of America.

(Filed in U. S. District Court July 7, 1917.)

Comes now District 21 of the United Mine Workers of America, and without waiving any rights under its motion to quash the summons of service upon it, and still insisting and relying upon said motion, and here protesting against being required to plead in this action, for the separate answer to plaintiffs' complaint filed herein, says:

I.

It adopts every paragraph of the answer filed herein by the United Mine Workers of America as and for its answer to plaintiffs' complaint, and makes each and every paragraph of said answer its answer and a part of this answer, the same as if it was repeated herein word for word, and relying upon each and every paragraph of said answer as a complete defense and bar to the right of each plaintiff to recover herein.

II.

And the said District 21 of the United Mine Workers of America, further answering herein, says, it makes paragraph No. 1 of this answer a part of this paragraph the same as if every word therein was repeated specifically in this paragraph, and in addition thereto, says:

That District 21 of the United Mine Workers of America is a labor union composed of about 25,000 working men in the States of Arkansas, Oklahoma, and Texas, who are engaged in the digging of coal, and organized into an unincorporated society; that it has no legal entity apart from its membership and is not engaged in business for profit anywhere, but has for its object and purposes shorter working hours for its members, reasonable compensation for services rendered and the betterment of general working conditions for its members, as shown by its constitution which has been in full force and effect for more than fifteen years before the filing of this action, and under which it has operated during all of said time. That no member or members, officer or officers of said District 21 of the United Mine Workers of America, is authorized or empowered to act for or on behalf of it, bind or represent it beyond the scope of the provisions and terms of said constitution; that if any member or members, officer or officers of said District 21 of the United Mine Workers of America, has conspired

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with any person or persons or become a member or members of, or a party or parties to, a conspiracy, combination, agreement, contract or understanding with any person or persons, firms or corporations, either named in the complaint or not named therein, to destroy the business or property of non-union mines, or to interfere with the production, loading, shipment or sale of coal produced from non-union mines, or have committed any act or acts in furtherance of any such conspiracy, agreement, contract or understanding it is beyond the scope and provisions and terms of said constitution and is therefore not binding upon said labor union and it pleads the terms and provisions of said constitution and the matters and things set forth herein as a complete bar to plaintiffs' right to recover against it herein.

III.

And District 21 of the United Mine Workers of America, further answering herein says, that it makes paragraph 1 of this answer a part of this paragraph the same as if
98 every word in said paragraph 1 was copied specifically in this paragraph, and further says:

That each and every local union named as a defendant in plaintiffs' complaint is an unincorporated labor union composed of a large number of individuals who are engaged in mining coal and working in and about coal mines at or near where said local unions may be located; that said local unions have no authority or power to act or bind District 21 of the United Mine Workers of America in any manner or for any purpose whatever; that neither the officers nor members of said local unions have any authority or power whatever to act for, represent or bind the said District 21 in any manner or for any purposes whatever; that if any of said local unions or the officers or members thereof, have conspired with any persons or corporations to interfere with mining, loading and shipment of coal in interstate commerce, or have committed any acts in furtherance of any such conspiracy, contract, agreement or understanding, such acts are not the acts of District 21 and it pleads such facts as a complete bar to the right of either of the plaintiffs to recover herein.

IV.

And District 21 of the United Mine Workers of America further answering says, that it makes paragraph 1 of this answer a part of this paragraph, the same as if every word was repeated specifically herein, and in addition thereto, says:

That if it be true that either of the plaintiffs had a cause of action against it for any of the alleged wrongs or damages claimed to have been suffered, as set forth in the complaint, neither of said plaintiffs can recover herein for the reason that the action was not begun until after more than one year had expired from the date of the alleged unlawful acts re-
sulting in the damages sued for, and that said dam-
99 ages was suffered more than one year before the in-
stitution of this suit, and it pleads the one year statute of limitations as a complete bar to the right of either of the plaintiffs to recover herein.

Wherefore, District 21 of the United Mine Workers of America, having fully answered herein, prays judgment in its behalf and for all proper relief hereunder.

HENRY WARRUM,
COVINGTON & GRANT,
Attorneys for Defendants.

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100 Separate Answer of Each Local Union.

(Filed in U. S. District Court July 7, 1917.)

Come now Local Unions Number 340, 560, 1130, 1526, 1530, 1565, 1810, 1814, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2494, 2766, 2769, 2770, 2772, 2841, and 2880, joining together in this answer for convenience only, and each local union says, that without waiving any rights under its motion to quash the summons and pretended service thereof upon it, but reserving all rights under said motion, and still insisting upon the same, and protesting against being required to proceed further, for its separate answer herein, says:

I.

It adopts every paragraph of the answer filed herein by the United Mine Workers of America, as and for its answer to plaintiffs' complaint and makes each and every paragraph of said answer its answer and a part of this answer, the same as if it was repeated herein word for word, and relying upon each and every paragraph of said answer as a complete defense and bar to the right of each plaintiff to recover herein.

Wherefore, having fully answered, each local herein prays that it have judgment in its behalf, and for all proper relief herein.

HENRY WARRUM,
COVINGTON & GRANT,
Attorneys for Defendants.

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101 (Mandate of Supreme Court of United States.)

(Filed in U. S. District Court October 23, 1922.)

United States of America—ss.

The President of the United States of America, To the Honorable the Judge of the District Court of the United States for the Western District of Arkansas.

(Seal of the Supreme Court
of the United States.)

Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Eighth Circuit, in a cause between United Mine Workers of America, et al., plaintiffs in error, and Coronado Coal Company, et al., defendants in error, No. 5154, wherein the judgment of the said Circuit Court of Appeals, entered in said cause on the 9th day of June, A. D. 1919, is in the following words, viz:

"This cause came on this day for final disposition by the Court and the plaintiffs in the court below, the defendants in error in this court, having filed in the District Court of the United States for the Western District of Arkansas a remittitur in the sum of One hundred twenty thousand, six hundred and no/100 ($120,600.00) dollars, in pursuance of the order and judgment of this court entered on April 28, 1919, as appears from a certified copy of said remittitur filed in the office of the Clerk of this Court.

It is on consideration thereof now here ordered and adjudged by this court that the judgment of the said District Court in this cause, as so reduced by the said remittitur, be, and the same is hereby affirmed with costs; and that the Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, each and

all by C. H. Finley and H. P. Hilliard, Receivers, and C. H. Finley and H. P. Hilliard, Receivers, have and recover against the United Mine Workers of America, et al., the sum of twenty dollars for their costs herein and have execution therefor."

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States by virtue of a writ of error agreeably to the act of Congress, in such case made and provided, fully and at large appears.

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And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and twenty-one, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said United States Circuit Court of Appeals in this cause be, and the same is hereby reversed with costs; and that the said plaintiffs in error, United Mine Workers of America, et al., recover against the said defendants in error One Hundred and seventy-eight dollars and eighty cents for their costs herein expended and have excution therefor.

And it is further ordered that this cause be, and the same is hereby remanded to the District Court of the United States for the Western District of Arkansas for further proceedings in conformity with the opinion of this court.

June 5, 1922.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of error notwithstanding.

Witness, the Honorable William H. Taft, Chief Justice of the United States, the eighteenth day of October, in the year of our Lord, one thousand nine hundred and twenty-two.

WM. R. STANSBURY,
Clerk of the Supreme Court
of the United States.

103 Costs of plaintiffs in error.

Clerk	$ 48.80
Printing Record	110.00
Attorney	20.00
	$178.80

Supreme Court of the United States October Term, 1921.

Costs of United Mine Workers of America, et al., in No. 31.

1919,	October Term, Docketing cause and filing record, $5.00; appearance, .25; filing precipe and receipt, .25; filing papers, .50; continuance, .25	6.25
1920,	October Term, Transfer, $1.00; appearance, .25; filing praecipe and receipt, .75; filing papers, 2.75; filing briefs, $5.00; argument, .20; continuance, .25.	10.20
1921,	October Term, Transfer, $1.00; appearance, .25; filing praecipe and receipt, .25; filing papers, 2.75; order, .20 order, .20 order, .20; argument, .20; judgment $1.00; filing same, .25; recording, .40 mandate, $5.00; preparing record for printer etc., $20.25; cost of printing parts of record, $110.00; attorney's docket fee, $20.00; costs and copy, .40;	162.35
		$178.80

Fee Book, page 27,462

Test: WM. R. STANSBURY,
Clerk of the Supreme Court of the
United States.

553 Law. File No. 27,462. Supreme Court of the United States. No. 31, October Term, 1921. United Mine Workers of America, et al vs. Coronado Coal Company, et al. Mandate. No. 553 Law. District Court of the United States, Western District of Arkansas, Fort Smith Division. Filed October 23, 1922. Wm. S. Wellshear, Clerk.

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104 Motion for Order to Release Bonds.

Filed in U. S. District Court Nov. 8, 1922.

Come now the defendants, in the above styled and numbered cause, and show to the Court:

That the Supreme Court of the United States, on June 5, 1922, refused the judgments rendered in this court against the above named defendants, and since that time a motion to rehear, filed by the above named plaintiffs, has been overruled by the Supreme Court, and that the mandate of the Supreme Court showing the same is and has been on file in this court for several days; that by reversing said cause the bonds which the above named defendants executed to stay the judgment and for costs are exonerated, and that proper orders should be made by this Court releasing said bonds.

Wherefore, the above named defendants pray this Honorable Court to enter an appropriate order releasing said bonds, and for all proper relief hereunder.

HENRY WARRUM
G. L. GRANT
Attorneys for the above named Defendants.

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105 Response of Plaintiffs to Motion for Order to Release Bonds.

Filed in U. S. District Court November 10, 1922.

Come the plaintiffs, and in response to the motion of the defendants to release the surety on the bond herein, state as follows:

The defendants gave a supersedeas bond on the appeal in this cause from this court to the Circuit Court of Appeals, giving as surety, the Aetna Casualty and Surety Company, a corporation organized under the laws of Connecticut, and authorized to do business in the State of Arkansas, and having in the State of Arkansas, agents upon whom service of process may be had. Under the law, said surety company became a party to this proceeding. Said surety company, before and at the time of executing said bond, required the defendants in this cause to indemnify said surety by placing in the possession of said surety company liberty bonds or United States Bonds, belonging to the defendants in this cause, which said liberty bonds amounted to the sum of about Eight Hundred Thousand Dollars ($800,000.00). The said surety company now has said bonds, which are the property of the defendants in this cause, in its custody and possession.

The plaintiffs state that the association defendants are incorporated associations, and have no funds within the jurisdiction of the court to the knowledge of the plaintiffs, upon

which an execution may be levied, and that the defendants, and each of them, have no property in Arkansas out of which said judgment can be made and obtained. The plain-
106 tiffs state that this cause has been remanded to this court for a new trial. Plaintiffs will insist upon a new trial, and believe that they will introduce sufficient testimony to entitle them to recover a large verdict against the defendants, and there is no property known to the plaintiffs out of which can be made the amount of recovery other than the property above described, being United States bonds, which are now in the possession of said surety, on the supersedeas bond.

Plaintiffs therefore move the court to require the surety to bring said bonds into this court, and pray that said bonds be impounded and brought into this court and held herein, until the final disposal of this cause. Plaintiffs believe that they will recover a judgment in this cause, and they know of no other means of collecting the same unless said liberty bonds now in the possession of said surety, be brought into this court by the orders of this court, and held herein until the final disposition of this cause.

Premises Considered, the plaintiffs pray that the said surety be required by order of the court to bring the bonds into court, and that the same be impounded herein, and that no order discharging the surety upon the supersedeas bond be made until said bonds are surrendered into the registry of this court, and that after said bonds are so surrendered, then and not until then, the surety may be released.

Premises Considered, the plaintiffs pray for a proper order herein, and for all other and further relief to which they may be entitled.

JAMES B. McDONOUGH.
Attorney for Plaintiffs.

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107 Affidavit.

State of Arkansas,
County of Sebastian—ss.

I, James B. McDonough, on oath state that I am of counsel for the plaintiffs in the above entitled cause, and that the matters and things set forth in the above and foregoing petition are true to the best of my knowledge and belief.

I further state that I have no knowledge of any funds belonging to the defendants, or any property belonging to the

defendants, out of which a judgment can be made, except the liberty bonds which are in the possession of the Aetna Liability and Surety Company, being the surety on the supersedeas bond in this cause.

JAMES B. McDONOUGH.

Subscribed and sworn to before me this 10th day of November, 1922.

ANNA ALTMILLER
(Seal) Notary Public.

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108 Order on Demurrer of Plaintiff, Sustaining Demurrer and Releasing Sureties on Supersedeas and Cost Bonds.

(Entered in U. S. District Court November 10, 1922.)

Before Judge Youmans.

On this day come the defendant, United Mine Workers of America, District No. 21 of the United Mine Workers of America, and John P. White, P. R. Stewart, John P. White as President of the United Mine Workers of America, P. R. Stewart as President of the United Mine Workers of America, District No. 21, William McLachlin, William McLachlin as President of the United Mine Workers of America, District No. 21, Tom King, Tom King as Board Member of the United Mine Workers of America, Jess Edwards, Charley Farley, Edward Cunningham, Edward Cunningham as President of District No. 21 of the United Mine Workers of America, Frank J. Hays, Frank J. Hays as Vice President of the United Mine Workers of America, William Green, William Green as Secretary-Treasurer of the United Mine Workers of America, Joe Overman, O. A. Brook, Dr. W. C. Chambers, Tom Kiger, Mike Cisco, Charles Hendry, Jim Lee, Jake Thompson, George Burnett, Pink Dunn, Jim McNamara, Pete McMullin John Mastell, James Slankard, Local Union No. 340 of the United Mine Workers of America, Local Union No. 374 of the United Mine Workers of America, Local Union No. 560 of the United Mine Workers of America, Local Union No. 586 of the United Mine Workers of America, Local Union No. 1130 of the United Mine Workers of America, Local Union No. 1526 of the United Mine Workers of America, Local Union No. 1530 of the United Mine Workers of America, Local Union No. 1565 of the United Mine Workers of America, Local Union No. 1810 of the United Mine Workers of America; Local Union No. 1814 of the United Mine Workers of America, Local Union No. 1842 of the United Mine Workers

of America, Local Union No. 1912 of the United Mine
109 Workers of America, Local Union No. 1934 of the United Mine Workers of America, Local Union No. 2027 of the United Mine Workers of America, Local Union No 2053 of the United Mine Workers of America, Local Union No. 2110 of the United Mine Workers of America, Local Union No. 2110 of the United Mine Workers of America, Local Union No 2160 of the United Mine Workers of America, Local Union No. 2494 of the United Mine Wrkers of America Local Union No. 2766 of the United Mine Workers of America, Local Union No. 2769 of the United Mine Workers of America, Local Union No. 2770 of the United Mine Workers of America, Local Union No. 2772 of the United Mine Workers of America, Local Union No. 2841 of the United Mine Workers of America, Local Union No. 2880 of the United Mine Workers of America, and M. B. Appleby, Bruce Jordan, Whit Miller, Ed Baker, H. S. Tredway, G. G. Daniels, John Turnipseed, Lewis Evans, Joe Coneoda, B. Trout, Joe Assola, Joe Kervillas, William Rodden, Charles Blackburn, Joe Lanier, Albert Hunter, Rich Handlin, Scott Atkins, Frank Petty, Claud Litchford, John Litchford, Otto Alimen, Carrey Crumpton, Sam Wooten, Marion Hulsey, Maje Hulsey, Tom Watson, Durwood Warren, Harry Birkett, Willis Congo, Leslie Congo, Bud Congo, Charles McKowen, J. W. Howard, Bud Williams (Col.), William Price, Peter McMullin, Jr., John Murray, John T. W. Davis, Brock Smith and Ed Kehee, by G. L. Grant, their attorney, and present their motion for an order to release the supersedeas and cost bonds filed by them in this case at the time of suing out a writ of error to the United States Circuit Court of Appeals for the Eighth Circuit; and,

Also, come the Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastion Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, by C. H. Finley as Receiver, and also comes C. H. Finley as Receiver for each and all of the said plaintiffs, by James
110 B. McDonough, their attorney, and file and present their response to the motion of defendants to release the said bonds and sureties thereon; and

Also come the aforesaid defendants and demur upon the record to the said response filed by the above named plaintiffs; and,

Said motion to release the said bonds and sureties thereon, and the response and demurrer thereto being presented to the court, and the court being well and sufficiently advised in the premises, doth find that the above named plaintiffs obtained a judgment in this court, and that the defendants obtained a writ of error from the United States Circuit Court of Appeals for the Eighth Circuit, to review said judgment on appeal, and at the time of obtaining said writ of error, were required by law to give a supersedeas bond in order to stay execution, and also cost bonds in order to prosecute said writ of error; that the amount of the supersedeas bond, aforesaid, was fixed by the court at the sum of $800,000 and the amount of the cost bond was fixed at $5,000; that the United Mine Workers of America and District No. 21 of the United Mine Workers of America executed a supersedeas bond in said sum of $800,000 with the Aetna Casualty and Surety Company, of Hartford, Connecticut, a corporation, as surety, conditioned "that if the said United Mine Workers of America and District No. 21, of the United Mine Workers of America shall prosecute their said writ to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void, also to remain in full force and virtue." That said bond was duly and properly executed and approved on the 21st day of March, 1918, by James D. Elliott, Judge, and was duly filed on March 23, 1918, in the office of the Clerk of this court, and is a valid and binding bond and obligation upon the part of the said United Mine Workers of America and District No. 21 of the United Mine Workers of America, and the said Aetna Casualty and Surety Company.

111 That the other defendants, above named, made and executed a cost bond with the Aetna Casualty and Surety Company, of Hartford, Connecticut, a corporation, as their surety, in the sum of $5,000.00, conditioned that if the said defendants "shall and will duly prosecute said appeal to effect and answer all costs if they fail to make good their plea, then the above obligation to be null and void; otherwise to remain in full force and virtue in law," which said bond was duly approved on the 21st day of March, 1918, by James D. Elliott, Judge, and filed on March 23, 1918, in the office of the Clerk of this court; that said bond is a valid obligation and binding upon the said defendants and the said Aetna Casualty and Surety Company.

That the said defendants duly prosecuted their appeals to the United States Circuit Court of Appeals for the Eighth Circuit, where the judgment was affirmed in part, and there-

after the said defendants obtained a writ of error from the United States Supreme Court, to which said court the said cause was carried on said writ of error and reviewed, and on June 5, 1922, the said Supreme Court of the United States reversed said cause as to all of the above named defendants; and that thereafter a mandate from the Supreme Court of the United States was forwarded by the clerk of the said Supreme Court of the United States to the Clerk of this court, and is now on file in the office of the clerk of this court, and is a part of the records of this court; and,

The court further finds that there is no merit in the response filed by the plaintiffs to the motion of the defendants to release the bonds and sureties thereon; and that the demurrer upon the record of the defendants above named should be sustained, and that the motion of the said defendants to release the said supersedeas and cost bonds, and surety thereon, should be sustained.

112 It is, therefore, by the court considered, ordered and adjudged that the demurrer upon the record of the defendants above named to the response of the plaintiffs aforesaid, should be, and it is hereby sustained, and it is further considered, ordered and adjudged that the said supersedeas bond and the cost bond aforesaid, be, and the same are hereby in all things released and discharged, and the said Aetna Casualty and Surety Company, of Hartford, Connecticut, the surety on each of said bonds, be, and it is hereby released and forever discharged from all liability upon the said supersedeas bond and upon the said cost bond; and,

The plaintiffs at the time duly excepted to the ruling of the court in sustaining the said demurrer, and in sustaining the said motion to release the bonds and sureties thereon, and in releasing said bonds and sureties.

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113 Notice of Plaintiffs in Re Motion for Order Releasing Sureties on Supersedeas Bond.

(Filed in U. S. District Court November 14, 1922.)

Notice.

To the above named Plaintiffs, or to James B. McDonough, their Attorney of Record:

You are hereby notified that on Friday, November 10, 1922, at 10 o'clock A. M., or as soon thereafter as the court will

hear us, the above named defendants will present a motion to the court, asking that the appeal bond, given at the time the defendants sued out their writ of error to the United States Circuit Court of Appeals, for the Eighth Circuit, be released and proper orders entered upon the record issuing the same.

This the 8th day of November, 1922.

HENRY WARRUM,
G. L. GRANT,
Attorneys for the above named Defendants.

Marshal's Return.

Fort Smith, Arkansas, Nov. 8, 1922.

Western District of Arkansas.

I received this Notice on the 8th day of November, 1922, and served it the same day by delivering a true copy to the within named James B. McDonough at his office in Fort Smith.

A. J. RUSSELL,
United States Marshall,

G. H. JOHNSON,
Chief Deputy.

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114 Defendants' Motion to Tax Costs.

(Filed in U. S. District Court January 6, 1923).

The above named defendants, for their motion to tax the costs against the plaintiff, state:

That this cause was appealed by the above named defendants to the United States Circuit Court of Appeals, and from that court to the Supreme Court of the United States; and that a decision and judgment was rendered and entered in favor of the said defendants in the Supreme Court of the United States, which judgment reversed the decision and judgment of the United States Circuit Court of Appeals and of the District Court of the United States for the Western District of Arkansas, Fort Smith Division; that said reversal was in favor of the defendants; that a large amount of costs accumulated in the District Court and in the Court of Appeals, and in the Supreme Court; that certificates of the Clerks of the Supreme Court and of the Court of Appeals showing the

amount in those courts that should be taxed in favor of the defendants are on file in this court; that the defendants are also entitled to recover a large amount of costs that accumulated in this court in their favor from the institution of the said suit until it finally passed to the Court of Appeals.

Wherefore, the defendants aforesaid pray that this court make an order taking all the costs that either are entitled to recover by reason of the reversal of said cause, and that a summary judgment be entered against the costs bonds filed by the plaintiffs for the amount of the costs due these defendants, and for all proper relief hereunder.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

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115 Amended Motion to Tax Costs.

(Filed in U. S. District Court January 23, 1923.)

Come the above named defendants, and for their amended motion to tax costs against the plaintiffs herein, state:

That on the 22nd day of November, 1917, a judgment was rendered in this court in favor of the above named plaintiffs and against the the above named defendants for a sum in excess of Six Hundred Thousand ($600,000) Dollars; that thereafter a writ of error was sued out by the said defendants and the case was carried to the Circuit Court of Appeals on said writ of error and that the said defendants were required to pay as costs on account of appealing to said Circuit Court of Appeals the sum of $1904.70 in the District Court of the United States for the Western District of Arkansas, Fort Smith Division, as the costs incident to and accruing upon said writ of error; that thereafter the said cause was affirmed in the United States Circuit Court of Appeals for the Eighth Circuit, and the said defendants above named sued out another writ of error and carried said cause to the Supreme Court of the United States, and in doing so the said defendants were compelled to pay as costs accruing upon said writ of error in the United States Circuit Court of Appeals the sum of $5194.60; that thereafter the said defendants incurred costs in the Supreme [—] of the United States in the sum of $178.80, and the said Supreme Court of the United States reversed the judgment of the said District Court of the United States for the Western District of Arkansas, Fort Smith Division, and the decision of the Circuit Court of Appeals for

the Eighth Circuit and remanded said cause; that as a result of said reversal by the Supreme Court of the United States and incident to the same the above named defendants
116 are entitled to have taxed in their favor the sum of $7,278.10 as shown by the certificate of Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, Fort Smith Division, attached hereto as Exhibit "A", and made a part hereof.

That said defendants further state that the United States Fidelity & Guaranty Company, a bonding corporation, signed the cost bond of the plaintiffs herein, and by the terms of said bond became and are liable to the defendants herein on said cost bond in the full sum of $7278.10.

That the defendants herein are entitled to have a summary judgment entered herein in their favor against the said Bonding Company, and the said plaintiffs for their costs aforesaid, such costs being only those incident to the writ of error prosecuted for the purpose of reversing the judgment of this court, and not covering the costs of trial which these defendants are advised are properly taxable at the final hearing of this cause and which must abide the event of the final disposition of the case.

Wherefore, the defendants herein pray that a summary judgment be rendered and entered against the plaintiffs and the United States Fidelity & Guaranty Company for the costs aforesaid, as shown by the said clerk's certificate attached hereto, and for all relief hereunder.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

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117 Exhibit "A".

District Court of the United States Western District of Arkansas, Fort Smith Division.

Coronado Coal Company, et al., Plaintiffs,
No. 553 vs. Law.
United Mine Workers of America, et al., Defendants.

I, Wm. S. Wellshear, Clerk of the District Court of the United States for the Western District of Arkansas, certify the following to be a true and correct statement of the costs taxed in favor of the defendants and against the plaintiffs

in the above entitled cause, under the mandate of the Supreme Court of the United States filed October 23, 1922:

Defendants' clerk's fees in trial court incident to and accruing upon Writ of Error sued out by defendants from judgment of November 22, 1917,	$1904.70
Fees and costs paid by defendants (Plaintiffs in Error) in U. S. Circuit Court of Appeals, for the Eighth Circuit, evidenced by the Certificate of the Clerk of that Court,	5194.60
Costs adjudged in favor of defendants (Plaintiffs in Error) in Supreme Court,	178.80
Total	**$7278.10**

Seal
Of the Dist Court
U. S. A.
Western Dist of Ark.

In Testimony Whereof, I hereunto set my hand and affix the seal of said District Court at office in the city of Fort Smith, Arkansas, this January 23, 1923.

WM. S. WELLSHEAR, Clerk.

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118 Order Sustaining Defendants' Amended Motion to Tax Costs.

(Entered in U. S. District Court February 26, 1923).

Before Judge Youmans.

Defendants' amended motion to re-tax costs heretofore submitted has been duly considered by the court. The motion prays for a summary judgment against the plaintiffs and against the United States Fidelity & Guaranty Company for $7,278.10, the amount of costs incurred by the defendants in prosecuting this case to the United States Circuit Court of Appeals, and to the Supreme Court of the United States, resulting in a reversal of the judgment theretofore rendered against them. The summary judgment was prayed against said surety company on the theory that it was a surety on plaintiffs' cost bond, conditioned for the payment of such costs. At the hearing of the motion, however, it was conceded that there was no cost bond of that kind and the prayer for a summary judgment against the United States Fidelity & Guaranty Company was withdrawn. The court is of the opinion that the motion should be sustained to the extent of awarding judgment against the plaintiffs for such costs.

It is, therefore, by the court considered, ordered and adjudged that the defendants, United Mine Workers of America, et al., do have and recover of and from the plaintiffs, Coronado Coal Company, et al., the said sum of $7,278.10, for which execution may issue.

To the ruling of the court upon said motion and awarding of the foregoing judgment thereon the plaintiffs duly excepted at the time.

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119 Order Setting Case For Trial.

(Entered in U. S. District Court June 2, 1923.)

Before Judge Youmans.

The plaintiffs appearing by James B. McDonough, their attorney, the defendants appearing by Webb Covington, their attorney, it is ordered that this cause be and is hereby set for trial October 15, 1923.

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120 Motion to Require the Plaintiffs to Pay Costs and to Secure the Payment of Costs not Taxed and Which May Accrue in the Future.

(Filed in the U. S. District Court August 16, 1923.)

Come now the defendants, joining together in this motion for convenience only, and severally move the court to require the plaintiffs in this action to pay the costs that have accrued to the defendant on the appeals prosecuted by the defendants to the United States Circuit Court of Appeals for the Eighth Circuit and to the Supreme Court of the United States; also to pay the costs already incurred on the trial of the case in the District Court, or to secure the same, and to secure the payment of the costs that may arise on the future trial of the case, in the United States District Court and the appellate courts, and for grounds of said motion these defendants severally state:

1. That this action was originally begun by permission of the United States District Court for the Western District of Arkansas, Fort Smith Division, sitting in Equity in Equity cause No. 246, upon an application filed by Franklin Bache, Receiver of the plaintiff Companies, in which the said receiver represented to the court that the plaintiffs had a valid cause of action against the defendants, and that the said receiver should and ought to bring suit against the defendants for the sums of money set forth in a copy of the original

complaint filed herein, which was attached to the application of the receiver. In said application the receiver further stated to the court that in his opinion the said cause of action was a valuable asset to the plaintiff companies, and that a suit for damages should be brought in this court. That said application was made under the oath of the said Frank-
121 lin Bache, Receiver, said application and oath being in writing and the original thereof being on file in this court in said Equity cause No. 246, a copy of which is attached hereto and made a part of this motion, being marked "Exhibit A" hereto.

2. That immediately after the court granted permission to the said Franklin Bache to file said suit, a complaint was filed in this court, in this cause, by the said Franklin Bache as Receiver of said companies, and by the nine plaintiff companies in which the said receiver and companies, as plaintiffs, prayed a judgment against these defendants for an alleged violation of the Sherman Anti-Trust Laws and amendments thereto. That thereafter the said F. Bache resigned as such receiver and one Andrew Dowd was appointed in his stead and as the successor of said Bache as trustee the said Andrew Down proceeded with said litigation. That the defendants severally interposed a demurrer to the complaint aforesaid and to the amended complaints, and the said demurrer was sustained and the cause dismissed, the court sustaining said demurrer upon the ground that the complaint failed to show a violation of the Federal Anti-Trust laws and for that reason failed to show that the United States District Court had jurisdiction of the cause of action. That thereafter, the plaintiffs obtained a review of said cause by the United States Circuit Court of Appeals, Eighth Circuit, and that court reversed the holding of the District Court, after which the cause went to trial in said District Court, resulting in a verdict and judgment in favor of the plaintiffs in the sum of $600,000.00, together with interest added thereto, an attorney's fee and costs of the action. That thereafter the said defendants obtained writs of error and the said judgment was reviewed by the United States Circuit Court of Appeals, Eighth Circuit, and affirmed with modifications; that thereafter the defend-
ants obtained other writs of error and said cause was
122 reviewed by the Supreme Court of the United States and upon such review that court reversed said cause, the Supreme Court holding that the District Court should have sustained the motion of the defendants for a directed verdict, and held that under the evidence the United States Court was without jurisdiction of the cause, and further ruled

that the United Mine Workers of America, the National Union, and District No. 21 of the United Mine Workers of America, the District Union, and the Local Unions that were defendants in the cause and the individual persons named as defendants therein were not liable under the evidence. The defendants state that said cause has been heard fully and the issues developed fully by the evidence in the case.

3. These defendants state that it was expensive for them to appeal said cause to the Circuit Court of Appeals and to the Supreme Court of the United States; that they were required to have voluminous records printed, and to pay other heavy costs and expenses, and to employ expensive attorneys to present and argue said cause in said appellate court; that this court has already entered judgment against the plaintiffs, in favor of the defendants, for costs of the appeal, the costs allowable being on only such as were incurred on the appeal and not the costs of the trial, which must abode the final outcome of the case; that the amount of costs to award the defendants in $7278.10 and that the plaintiffs have demanded payment of such award upon the receiver but he has failed and refused to pay the same.

4. That the plaintiffs have demanded a retrial of this case and it has been set down for trial on the 15th day of October, 1923, and a special judge has been assigned to preside over the trial. That the trial of the cause in the District Court and in the appellate courts, if appealed, will be very expensive;
123 that the expense of investigation, locating witnesses and interviewing them, taking depositions, paying attorneys fees, paying stenographers, United States Marshal's fees Clerk's fees and other court costs, and paying the expense of getting witnesses to court, will amount to many thousands of dollars; that the witnesses are scattered over many states and the expense of preparing for trial and trying the case anew will be many thousands of dollars; that these defendants honestly believe that the United States District Court is without jurisdiction of this cause, and of the defendants in this action, as has been determined by the Supreme Court of the United States, and they honestly believe that, under the law as declared by the Supreme Court of the United States, the plaintiffs herein cannot successfully maintain their alleged cause of action against the defendants herein.

5. These defendants severally state that the plaintiff Companies have been shown by their receivership proceedings that they are insolvent, and that they are without assets to

pay costs of this case; that their assets have been sold under orders of the court at public and private sale, to Mr. Charles Henry, of Philadelphia, Pennsylvania, and others; that the said Mr. Henry has bought many claims against said companies and in favor of said companies, including a claim of the Sebastian County Coal Company against one Franklin Bache, for the sum of $30,392.61, and that he has bought equities in lands and property of the companies; that he has paid nominal sums therefor, paying only $100.00 for the said claim against the said Bache; that after the said Henry acquired said claims against the said plaintiff companies, he conveyed and sold to the Kali Inla Coal Company, a West Virginia corporation, owned almost entirely by the said Franklin Bache, a large amount of said claims. That the order of the court directing said receivers to sell said property, in-
124 cluding the claim of $30,392.61 due by Franklin Bache to the Sebastian County Coal Company, was made on January 6th, 1919, and appears of record in Record Book #8, at page 608 et seq. of the Records of said court, and particular reference is made thereto and these defendants ask to read said order on the hearing of this motion. That the order of court, approving the public sale of said property, was made on January 6th, 1919, and appears of record at page 609 et seq., of Record Book #8 of the Records of said Court, and particular reference is made thereto and the defendants will ask to read said order on the hearing of this motion. That the order of the court, approving the transfers and conveyances of the property and claims to the said Charles Henry, Jr., were made on January 6th, 1919, and appear of record in Record Book # 8, pages 607 and 610 of the records of said Court. Specific reference is made to said orders and these defendants will ask to read said orders on the hearing of this motion. That the said Charles Henry, Jr. and the said Kali Inla Coal Company are the owners of the assets of the plaintiff companies and are the owners and holders of the claims against them, and that the claims of the two said parties against said plaintiff corporations are more than $400,000.00, and that the claims held by the said Henry, are, as these defendants are advised and believe, preferred claims, and take precedence over the claims of general creditors of said plaintiff corporations, as is declared in the order of court made January 6th, 1919, and of record in Record Book #8, page 598, of the Records of this court, Specific reference is made to said order and the defendants will ask to read same on the hearing of this motion. These defendants further state that the said Franklin Bache is President and owns 509 shares of the capital stock of the Kali-Inla Coal Company;

that J. C. Brown, of Philadelphia, Penn., is secretary and owns 90 shares of the capital stock of said corporation;
125 and that C. H. Finley, the receiver and plaintiff in this action, is treasurer and owns one share of the capital stock of said Kali-Inla Coal Company; that the said corporation is capitalized at $60,000.00, all of which has been fully paid, and that it has assets in the sum of $914,774.68, as shown by its annual statement under oath filed in the office of the Secretary of State of the State of Oklahoma in July 1923, a certified copy of which these defendants will offer in evidence on the hearing of this motion. That the Kali-Inla Coal Company and the said Henry are the beneficiaries of any judgment that could be rendered against these defendants in this action. That the said plaintiffs are able, by and through the said Henry and Kali Inla Coal Company, to pay the costs and secure the payment of the future costs of the case.

6. These defendants state that it is apparent, from the decision of the Supreme Court of the United States, that the plaintiffs have no valid cause of action against the defendants, and that in reality no such cause of action existed in their favor at the time this court permitted the receiver to sue these defendants, and that if this court had known the facts as they now appear from the decision of the Supreme Court of the United States and from the record of this case, it would not have permitted the plaintiffs to institute or prosecute said cause. The defendants further state that under the facts and the law applicable to this case, there is no reasonable probability of the plaintiffs recovering a valid judgment against the defendants on a retrial of this cause, and that if plaintiffs insist upon a retrial they ought to be required to pay the costs already accrued in favor of the defendants as adjudged by the court, and should also be required to give bond for the further payment of any future costs, and all costs herein, in this court or in any other court that it may be appealed to, and in event of their failure to do so the cause should be dismissed.

126 Wherefore, defendants pray that the plaintiffs be required to pay all costs awarded them by the order of this court, to-wit: $7,278.10 and to give bond to secure the payment of the other costs and all future costs of this cause, and in the event of the plaintiff's failure to do so within a

reasonable time to be fixed by the court, that this cause be dismissed and for all proper relief hereunder.

HENRY WARRUM
G. L. GRANT,
Attorney for Defendants.

State of Arkansas,
Sebastian County—ss.

I, G. L. Grant, on oath state that I am one of the attorneys for the defendants in the above styled cause; that the matters and things set forth in the foregoing motion are true as I verily believe.

G. L. GRANT.

Subscribed and sworn to before me on this the 16th day of August, 1923.

WM. WELLSHEAR, Clerk.

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127 Exhibit A.

Application of F. Bache, Receiver.

In the United States District Court Western District of Arkansas, Fort Smith Division.

Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Mining Company, Bache-Denman Coal Company Hartford Coal Company, Bache-Denman Coal Company, Kali Inla Coal Company, Plaintiffs.

246 vs. Equity

Sebastian County Coal Company, Mammoth Vein Coal Company, Mammoth Vein Royalty Company, Prairie Creek Coal Mining Company, Speer Hardware Company, Sebastian County Coal and Mining Company and T. W. Boone, Defendants.

Comes F. Bache, Receiver for the Coronado Coal Company, Denman, Coal Company, Mammoth Vein Coal Mining Company, Bache Denman Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Company, Mammoth Vein Royalty Company, and Prairie Creek Coal Mining Company, and respectfully asks leave of the court to bring suit against the United Mine Workers of America, and the other defendants named in the complaint, a copy of which is hereto attached, and made a part hereof.

The receiver respectfully shows that the facts set forth in the complaint, a copy of which is hereto attached, are true

and the coal companies above named have a cause of action against the defendants set forth in said complaint, and your petitioner as receiver, should and ought to bring suit against said defendants for the recovery of the sums set forth in said complaint.

The receiver respectfully shows that in his opinion the said cause of action is a valuable asset of said companies and
128 said suit should be brought immediately, and brought in this court.

The receiver further shows that the garnishees named in said complaint are indebted to the defendants named therein, and the said companies and your petitioner as receiver are entitled to have the writs of garnishment and attachment issued and to impound the funds named in the complaint. Your petitioner shows that unless this is done, valuable assets belonging to the companies and valuable rights of the creditors of said companies will be lost.

Premises considered, the said Receiver therefore, prays that on order be made, authorizing him to bring and maintain said suit.

F. BACHE, Receiver.

Affidavit.

I, F. Bache, on oath state that I am the receiver named in the above petition. And I further state that the matters and things set forth in said application and complaint are true to the best of my knowledge and belief.

And I further state that said suits should be brought immediately.

I further state that in my opinion, the evidence which will be offered at the trial will be ample and sufficient to show that the plaintiff is entitled to recover against all the defendants named and more especially against the United Mine Workers of America and each member thereof.

F. BACHE.

Subscribed and sworn to before me this 1st day of September, 1915.

BEN D. KIMPLE.

Com. Exp. Nov. 10, 1914.

Endorsed: Filed September 1, 1914. Wm. S. Wellshear, Clerk.

129 Order Reciting withdrawal of Motion for Cost Bond and of the Filing of Motion for Judgment on the Mandate.

(Entered in U. S. District Court August 29, 1923.)

Before Judge Youmans.

This day come the defendants by G. L. Grant, their attorney, and by leave of court withdraw their motion to require plaintiffs to pay and to secure the payment of costs, which was filed on August 16th, 1923, in the above entitled cause, and now file motion for judgment on the mandate herein.

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130 Motion for Judgment Upon Mandate.

Filed in U. S. District Court August 29, 1923.

Come now the defendants in the above entitled cause and separately move the Court for a judgment in their behalf upon the mandate of the Supreme Court of the United States in said cause.

G. L. GRANT,
HENRY WARRUM,
Attorneys for Defendants.

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131 Petition for Production of Documents and Papers.

Filed in U. S. District Court Sep. 1, 1923.

Your petitioner, C. H. Finley, respectfully represents:

I.

That suit was brought by your petitioner as plaintiff in the above entitled case, receiver as therein entitled, against the defendants therein named for damages under the Sherman Anti-Trust Act as therein specified and set out, to which complaint the defendants, the United Mine Workers of America, District No. 21, United Mine Workers of America Local Unions Numbers 340, 374, 560, 586, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494, 2766 2769, 2770, 2772, 2841, 2880 of the United Mine Workers of America, and all other associates and individual defendants therein filed answers, and the case was first tried beginnnig Oct. 23, 1917, and is now set for re-trial for Oct. 15, 1923.

II.

Your petitioner believes and alleges that during the period from April 1, 1914, through the balance of said year 1914,

said defendant, the United Mine Workers of America, the International Union, had in force and effect a duly adopted Constitution and By-Laws which empowered certain officers and boards and committees of defendants to do and perform distinct and desginated acts, and that said powers so delegated were used by said officers, committees and boards of defendants in executing the conspiracy herein alleged, and that the contents of said Constitution and By-Laws tend to prove the allegations herein contained relating to the forming and executing of said conspiracy.

132 III.

Your petitioner believes and further alleges that the defendant, the United Mine Workers of America, the International Union, beginning with the year 1898 and coming down to and including the year 1916, held conventions annually until 1910 and bi-annually thereafter, with certain special conventions interspersed. That the official record of the proceedings at said conventions are in printed volumes (the proceedings for the years above mentioned being contained in 18 small volumes) containing the reports of the officers of the defendants for each year from 1898 to 1916 inclusive, the action of said defendants through said conventions and special conventions and discussions and views of the defendants relative to the policy of the United Mine Workers of America, relative to the organization of non-union coal mining fields, and also of the policies and methods to be followed by the defendants in all non-unon coal mining fields, as well as the policy and methods to be followed relative to open shop mines in organized fields.

Your petitioner believes and alleges that the said convention and special convention proceedings are pertinent, relevant and material to the issues in this case and support material allegations thereof in that they show the purpose, object and intent, with which the defendants committed the acts resulting in injury to petitioner as in the complaint alleged, the same being in pursuance of the general policy formulated and expressed at said conventions and special conventions to prevent the shipment to market of any coal mined by open shop mines in the United States.

IV.

Your petitioner believes and further alleges that during
133 the years 1912, 1913, 1914 and 1915, meeting were held by the executive board or committee or said International Union, provided for by its said constitution and that

particularly during the year 1914 the said International executive committee held meeting as follows:

May 4, or May 7th, at Indianapolis,

July 2 or July 3rd, at Kansas City,

August 10 or 17th to 22nd, at Indianapolis,

November 16th to 21st at Philadelphia,

November 30th at Indianapolis,

and from time to time on other dates to your petitioner unknown, and that a written, typewritten or printed record of the proceedings of the same is in the possession and control of said International Union, in the hands of its president and or the secretary-treasurer, or some other proper officer or officers.

That said record of said proceedings are relevant to and support material allegations in the complaint in the above entitled case in that they set forth proceedings of the governing body of said International Union immediately preceding, during and following the acts therein complained of.

Petitioner believes and avers that said proceedings will show the purpose and object of said acts, that the same were committed for the purpose and with the intent of preventing the shipment by plaintiff of his coal to other States in competition with the coal mined by union operators in other States and that said acts were duly authorized and ratified by said International Union and were in pursuance of its object and policy.

V.

That from the year 1898 down to and including April
134 26, 1917, the International Union has issued and circulated to its membership a journal called the United Mine Workers Journal (hereinafter called The Journal) which by the Constitution of the said United Mine Workers of America, is constituted its official publication and all the numbers and issues whereof are contained in certain bound volumes in the possession and control of the International Union or its proper officers.

All said Journals are relevant and material to the issue herein and your petitioner believes that each volume thereof contains matters in support of a material allegation of said complaint.

Said Journals for the years 1914 to 1917 inclusive, contain editorials, notices, reports of officers and authoritative articles, illustrations and narratives relating to and describing events in connection with the strike which took place against the coal companies for which your petitioner is Receiver in Prairie Creek Valley, in the State of Arkansas, in 1914, and showing the purpose thereof as alleged in the complaint, and all of said Journals for the years 1898 to 1917 inclusive contain other matter showing the scope and extent of the duties and powers of the members and officers of the International Union and of its district and local branches and their relations one to another, and the method of their functioning in actual practice, and support the allegations of the complaint that the acts of said District 21 and the various local unions of Arkansas and Oklahoma, more fully enumerated in the complaint, and the officers and members thereof, in connection with the acts complained of in the above entitled case were done as the authorized agencies or agents of said International Union in pursuance of the purposes and objects thereof, and further supporting the allegation that the acts complained of were done by defendants for the purpose of preventing plain-
135 tiff from shipping his coal to other States in competition with coal mined by union operators in other States.

VI.

Your petitioner further alleges that between the years 1898 and 1916 inclusive there were held a number of meetings between the representatives of the International Union, and of certain sub-ordinate branches thereof, and the operators of union mines in the States of Pennsylvania, Ohio, Indiana, and Illinois, which meetings were and are termed joint conventions, and the proceedings at which are contained in certain printed volumes (eight small volumes) in the possession of defendant, the International Union, which volumes contain the verbatim reports of said proceedings and are used and treated by said International Union and by the operators participating therein, as containing the official report and as being the authorative record thereof.

Petitioner alleges that the said proceedings are relevant and important to the issue in the above entitled case and support material allegations of the complaint therein, in that they show that the purpose of defendants in interfering with and preventing the operation of plaintiff's mines was to prevent shipment by plaintiff of his coal to other States in competition with the union mined coal of other operators in other States.

VII

Your petition further alleges that between the years 1904 and 1914 inclusive, there were held a number of meetings between the representatives of the International Union, and of certain sub-ordinate branches thereof, more particularly branch districts 14, 21 and 25, United Mine Workers of America, and the operators of union mines in the States of Missouri, Kansas, Arkansas, Oklahoma and Texas, which meet-
136 ings were and are termed joint conventions, and the proceedings at which are contained in certain printed or typewritten reports in the possession of defendant, the International Union, and of defendant District 21 of the United Mine Workers of America, which printed or typewritten reports contain the verbatim reports of such proceedings and are used and treated by said International Union and by the operators participating therein, as containing the official report, and as being the authoritative record thereof.

Petitioner alleges that the said printed or typewritten proceedings contain reports of debates and discussions which took place at meetings held between the above enumerated parties, during the years in question, and that said proceedings are relevant and important to the issue in the above entitled case, and support material allegations of the complaint therein in that they show that the purpose of defendants in interfering with and preventing the operation of plaintiff's mines was to prevent the shipment by plaintiff of his coal to other States in competition with the union mined coal of other operators in other States.

VIII.

Your petitioner further believes and alleges that said International Union has in its possession and control certain correspondence which had passed between its president and the various officers or members of District 21, United Mine Workers of America, said correspondence having passed between the said parties between April 1, 1914 and January 1, 1915. That said correspondence contained reference to the Bache-Denman operations in said District 21, all of which are relevant and material to said cause and tend to support material allegations of the complaint therein, showing the pur-
137 pose and object of said conspiracy and the participation therein of said defendants as in said complaint alleged.

IX.

Your petitioner further believes and alleges that said International Union has in its possession and control the expense accounts of James Mullen, International Executive Board Member of District 21 of the United Mine Workers of America, and of John P. White, President of the United Mine Workers of America, for the period from April 1, 1914, through the year 1915.

The said expense accounts of the said individuals show that the individuals rendering the said accounts claimed and have received from the United Mine Workers of America reimbursement for travelling expenses and hotel bills on various dates between and at various points, and will indicate the presence of said individuals at the several points so designated at the several times. The presence of the said individuals at the several points so indicated and at the times in question is relevant and material to the said cause and tend to support material allegations of the complaint therein showing the purpose, object and execution of said conspiracy and the participation therein of said individuals, offiically acting for said defendants as in said complaint alleged.

X.

Your petitioner further believes and alleges that on January 28, 1898, a contract or agreement, known as the "Chicago Agreement", was entered into between the United Mine Workers of America, acting through their International officers, and the operators of the so called Central Competitive Coal Field, consisting of the operators of Illinois, Indiana, Ohio and Western Pennsylvania. The said Agreement aforesaid
138 is relevant, material and pertinent to the issue in the above entitled case and supports material allegations of the complaint therein, in that it shows the early inception of the purpose of defendants in interfering with and preventing the shipment of non-union coals in inter-state competition with union mined coals, as a phase and continuation of which policy, defendants prevented the shipment by plaintiffs of their coal to other States in competition with the union mined coal of other operators in other States.

XI.

Your petitioner believes and further alleges that during the period from April 1, 1914 through the year 1914, defendant District 21 of the United Mine Workers of America, had in force and effect a duly adopted Constitution and By-Laws, subordinate to the Constitution and By-Laws of the Inter-

national Union, which district Constitution empowered certain officers and boards and committees of the defendant district to do and perform distinct and designated acts, and that said powers so delegated were used by said district officers, committees and boards of the defendant district in executing the conspiracy herein alleged, and that the contents of said Constitution and By-Laws tend to prove the allegations herein contained relating to the forming and executing of said conspiracy.

XII.

Your petitioner further alleges that in the years 1903 to 1918 inclusive, meetings in the form of district conventions and otherwise were held of defendant District 21 of the United Mine Workers of America said District 21 comprising the membership of the United Mine Workers of America employed in coal mines in the State of Arkansas, Oklahoma and Texas attended by officers and members thereof, and by representatives of the several local unions within the States
139 enumerated, including the particular defendant local unions set forth in said complaint, at which meetings there was authoritative discussion and reference to whether plaintiff's coal companies should be permitted to open their coal mines upon the so-called non-union basis and discussing this and other matters relative and pertinent to the trial of this cause.

Your petitioner alleges that meetings or conventions of said District 21 were held as above described on:

December 14, 1908,
May 18, 1914,
September 21, 1915,
On certain days in April of 1916
to your petitioner unknown,
September 15, 1916,
And on certain other dates of 1903
to 1918, to your petitioner unknown,

and that reports of the proceedings thereof in printed, typewritten or manuscript form are in the possession of, or under control of said District 21 and or said International Union and officers and representatives thereof.

Your petitioner believes and alleges that the said proceedings of the conventions and special conventions of said District 21 are extremely important, pertinent, relevant and material to the issues involved in the cause, and that said proceedings tend to prove the allegations of the complaint

herein. The said proceedings of the said conventions and special conventions of District 21, your petitioner alleges, tend to show that said District 21 and the said Local Unions enumerated in the complaint as defendants, and other Locals in the States comprising said district, acting as the authorized agencies of, and aided and abetted by, the International Union, intended to and did close down the mines of the plaintiff and damaged them and caused their inability to fulfill
140 their contracts and caused the companies for which plaintiff is Receiver to suffer losses as in the complaint herein averred, for the purpose, with the intent, and contemplating as the necessary result thereof the interference with and prevention of the shipment of petitioner's open shop coal to other States, and the sale and delivery thereof in the competitive markets available to petitioner and to operators of union mines in other mines in other States. These discussions were had in all said meetings, conventions, or special conventions, of said District 21.

XIII.

Your petitioner further believes and alleges that during the years 1912 to 1916 inclusive, the executive committee of said District 21 provided for by its Constitution held meetings on various dates to your petitioner unknown, at which meetings discussion took place relative to the said Prairie Creek strike, the part to be played therein by said District 21, by the International Union, and by the several Local Unions in Arkansas and Oklahoma, including particularly the Local Unions named as defendants herein, and the various officers and members thereof, the minutes of which meetings are in the possession, power and control of said District 21 of the United Mine Workers of America, which minutes are pertinent and material to the above cause and support material allegations in the complaint therein, in that they show the participation in said strike, and in the damage to plaintiff in the course thereof, of said District 21 and the officers and members thereof, and by said International Union, and show the purpose and object of said damage to plaintiff to have been the interference and prevention by defendants of the shipment by the companies for which petitioner is Receiver of their coal into other States in competition with the coal mined by union operators in other States.

141 XIV.

Your petitioner further believes and alleges that during the year 1912 joint interstate agreements or contracts were entered into between the United Mine Workers of

America, acting through their District officers, and the operators operating union mines in the territory covered by Districts 21, 14 and 25 of the United Mine Workers of America, which contracts were in force in March, April, May, June and July of the year 1914. The said contracts aforesaid are relevant, material and pertinent to the issues in the above entitled case and supports material allegations of the complaint therein, in that they show the agreement existing in the year 1914 between the United Mine Workers of America, and particularly District 21, thereof, and the union operators in the said several States comprising said Districts to which the said contracts apply.

XV.

Your petitioner further believes and alleges that for the years 1914, 1915 and 1916, the officers of the said District Branch of the United Mine Workers of America known as District 21 made and filed and presented to the periodical conventions of said District, written, typewritten or printed reports of their several activities as officers of the said District Branch of the said Mine Workers of America for the period 1914, 1915 and 1916 or parts thereof, which said reports or authorized copies thereof your petitioner believes are in the possession of and under the control of the proper officers thereof. Said reports being of the presidents of District 21 of the United Mine Workers of America, in office during the said years, to wit: P. R. Stewart, Pete Hanraty, Edward Cunningham, John Wilkinson, William Daly, and William McLaughlin, as Presidents, and Fred Holt, E. F. Ross, and T. B. Douglass and H. B. Long as Secretary-Treasurers of the United Mine Workers of America, and of G. W. Lind-
142 say, and J. D. Winter, as the Vice-President of the said United Mine Workers of America, or any other persons occupying any one of said respective offices during said period.

Said reports of the said officers are pertinent and relevant to said cause in that they will show the participation of said District 21 as agencies of said International Union in the Prairie Creek Valley strike and in the injury to plaintiffs, and will show the intention and purpose of said defendants in causing said injury to plaintiffs as alleged in said complaint.

The report of the Secretary-Treasurer of District 21, for the said period is especially pertinent to the present issue in that it will show payment by the United Mine Workers of America, through its District Branch 21, of certain sums of

money to participants in the controversy herein on account of their activities, and to certain other persons on account of their charges and disbursements in connection with the defense of union participants in said controversy in an endeavor to exonerate members guilty of the conspiracy alleged in said complaint.

XVI.

Your petitioner believes and further alleges that said District 21 during the period from April 1, 1914, to January 1, 1916, and during the times complained of in the complaint herein, kept a set of books showing in detail the disbursements of money made by it and by the International Union through it, in aid of the execution of the conspiracy in said complaint alleged, and that it also received from time to time, written reports, letters and communications from the officers of the Local Unions within said District 21 and from members of said Local Unions, including officers and members of the Local Unions enumerated as defendants
143 herein, and including parties employed at the mines of your petitioner, and that during said time said District 21 issued vouchers, made and executed contracts with various parties for the purpose of furnishing supplies or material or services in aid of the execution of, or in an endeavor to exonerate members guilty of, the conspiracy alleged in said complaint, and petitioner believes and alleges that said books, vouchers, papers, reports, communications and contracts are pertinent to the issue involved herein, in that they tend to show that said District 21 and said Local Unions named as defendants herein, as well as other Local Unions in said District, acting as the authorized agencies of, and aided and abetted by said International Union, intended to and did close the mines of plaintiffs and damaged them, and caused losses as in the complaint herein averred, for the purpose, with the intent, and contemplating as the necessary result thereof, the interference with and prevention of the shipment of petitioner's open shop coal to other States and the sale and delivery thereof in competitive markets available to your petitioner and to operators of Union mines in other States.

Your petitioner alleges that the said books, vouchers, communications, reports, contracts and leases are now in the hands and possession or control of said District 21 and the President and Secretary-Treasurer of said District 21, or of other officers or agents of said District 21.

XVII.

Your petitioner believes and further alleges that during the period from April 1, 1914 to January 1, 1916, inclusive, the said District Branch of the United Mine Workers of America known as District 21, kept a bank account in the name of its then Secretary-Treasurer in certain banks in the City of McAlester, Oklahoma, and particularly in the Oklahoma State Bank and in connection with said bank ac-
144 counts had and from time to time used certain check books from which it executed and delivered to certain persons certain checks, directing said banks to pay certain monies belonging to said District 21 of the United Mine Workers of America, which said checks, after payment, were returned by the said banks to District 21 of the United Mine Workers of America or to its then Secretary-Treasurer.

Further, that in the use of said check books as is customary, the said Secretary-Treasurer of said District 21, or his duly authorized agent, from time to time filled out stubs of said checks showing the use to which the said checks were put and persons to whom they were paid.

The said check books and stubs thereof and the cancelled checks returned by said banks to the Secretary-Treasurer in connection therewith, are relevant, material and pertinent to the issue herein involved, in that they tend to show certain payments by the said Secretary-Treasurer as an officer of the said District 21 of the United Mine Workers of America to certain persons and corporations, on account of materials, commodities or services furnished or rendered by said persons or corporations to the said United Mine Workers of America or Branch District thereof, in connection with the promotion of activities resulting in the damage for which the present suit is brought, or in connection with shielding participants thereof from the consequences thereof.

XVIII.

Your petitioner believes and further alleges that the said District 21 of the United Mine Workers of America, has in its possession and control the expense accounts of P. R. Stewart, President of said District 21, United Mine Workers of America, and Fred Holt, Secretary-Treasurer of said District 21, United Mine Workers of America, for the year 1914.

145 That the said expense accounts of the said individuals show that the individuals above mentioned rendering said accounts claimed and have received from District 21 of

the United Mine Workers of America, reimbursement for traveling expenses and hotel bills on various dates between and at various points, and will indicate the presence of said individuals at the several points so designated at the several times.

The said expense accounts are relevant and material to the issues of said complaint and support material allegations thereof as above alleged, in that they will tend to show that the said individuals, as representatives of said District 21 of the United Mine Workers of America, were present at the several points so indicated, at the times indicated and particularly to show their presence in the vicinity of Prairie Creek, Fort Smith, Hartford and other points at various times immediately prior, during and subsequent to the period involved in the complaint, and their participation, acting as agencies of said District 21, and of the International Union, in the events and activities resulting in the damage for which the present suit is brought.

XIX.

Your petitioner believes and alleges that there are in existence in the possession and under the control of the United Mine Workers of America, District 21 of the United Mine Workers of America, and of the several Local Union Branches of the United Mine Workers of America above named as defendants herein, written, typewritten or printed lists of the members of the said United Mine Workers of America comprising the said District 21 and the said local union branches included therein during the period April 1, 1914, to May 1, 1916 inclusive, showing how and what members of the said United Mine Workers of America included within the said sub-division District 21, or Branches thereof, comprised said District and Local Union Branches thereof from time to time during the said period.

146 The said membership lists are relevant, material and pertinent to the present issue, in that they will tend to identify as members of the United Mine Workers of America the individuals who in the course of the trial of the present case may be shown to have participated in the present controversy. The said membership lists are pertinent to the present issue in that they will identify as a member or representative of the United Mine Workers of America, the participants in the said controversy and will tend to support allegations in said complaint that the destruction of the plaintiffs' property was by members and representatives of the United Mine Workers of America in pursuance of their membership and representation thereof.

XX.

Your petitioner further believes and alleges that during the years 1914, 1915 and 1916, meetings were held by Local Unions Numbers 340, 374, 560, 586, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494, 2766, 2770, 2772, 2841, and 2880, at which discussions were held of the purposes and objects of said Prairie Creek Valley strike and of the acts done and the injury to complainants in pursuance thereof as therein alleged, and a record of the proceedings at which are in the possession and control of said International Union and of said District 21 and said Local Unions, which records are relevant and material to the issues of said complaint and support material allegations thereof as above alleged and contain proceedings relative to the expulsion and suspension of certain members thereof, employees of complainants, for refusing to participate in said controversy and other evidence of the contemplated coersion by defendants of employees of complainants.

147 XXI.

Your petitioner further believes and alleges that the said Local Unions Numbers 340, 374, 560, 586, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494, 2766, 2769, 2770, 2772, 2841, and 2880, have in their possession and control certain vouchers, receipts, records of disbursements and reports of officers showing disbursements by their respective officers of sums of money during the years 1914, 1915 and 1916 in pursuance of said Prairie Creek Valley strike and which will tend to show the purpose and object thereof, and the participation therein by said Local Unions acting as agencies of said District 21 and of the International Union to the injury of complainants as in said complaint alleged.

XXII.

Your petitioner further believes and alleges that the said Local Unions Numbers 340, 374, 560, 586, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494, 2766, 2769, 2770, 2772, 2841, and 2880, kept bank accounts in their Local Union name and/or number, or in the name of their respective Secretary-Treasurer in certain banks in the respective cities where their respective headquarters are located, and elsewhere, and in connection with the said bank accounts had and from time to time used certain check books from which said Local Unions executed and delivered to certain persons certain checks directing the said respective banks to pay certain monies belonging to said Lo-

cal Unions, which said checks after payment were returned by the said respective banks to said respective Local Unions or to its then Secretary-Treasurer.

148 Further, that in the use of said check books, as is customary, the said respective Secretary-Treasurers of said respective Local Unions above enumerated, or their respective duly authorized agents, from time to time filled out the stubs of such checks showing the use of said checks and the persons to whom they were paid.

The said check books and stubs thereof and cancelled checks returned by said respective banks to the said respective Local Unions, or the respective Secretary-Treasurers thereof, will tend to show the purpose and object thereof and the participation therein of said Local Unions acting as agencies of said District 21 and of the International Union to the injury of complainants in said complaint alleged.

XXIII.

Your petitioner further alleges that the papers, books, records, etc., above described are in the possession, power and control of said defendants, or some of them and can be produced by them at the trial of this case without undue expense and inconvenience. If it please the Court so to direct, your petitioner is willing to advance the cost of transporting same to and from the trial thereof. Your petitioner has no originals thereof and no copies thereof in authentic form and knows of no means of obtaining same for use at said trial except by production thereof by defendants through their proper officers.

The items called for under paragraphs III, IV, V, VI, VIII, IX, X, XII, XV, XVI, XVII, XVIII, XIX, XXI, and XXII hereof were ordered produced by the Court in the former trial of the above entitled case under objection by defendants and exception thereto was dismissed by the Circuit Court of Appeals for the Eighth Circuit on the appeal to said Court from the Judgment entered on the verdict in the District Court. No ruling was made on this exception by the Supreme

149 Court of the United States on the subsequent appeal taken to the latter Court from the Circuit Court of Appeals.

The other items herein asked to be produced are of the same general nature as the items set forth in the paragraphs above enumerated and are material and relevant to the issues herein for the same reasons which govern the relevancy of the other items.

Certain of the papers, documents, records, and etc., above demanded were marked Plaintiffs Exhibits 4, 15, 17, 18, 19, 29 a to h, 29 h-2, 29 i 29-r inclusive, 30 a to h inclusive, 31 a to z inclusive, and 31aa, 31bb, and 31cc, and Defendants Exhibit No. 1, deposition of William Green, Secretary-Treasurer of the United Mine Workers of America taken before William S. Garber, Notary Public, at the office of the latter, 525 Lemcke Bldg., Indianapolis, Indiana, on August 25, 1917.

Wherefore, your petitioner prays:

1. That an order be made herein directed against the United Mine Workers of America requiring and compelling said defendants to produce or cause to be produced at the trial of the said case, the following papers, books, instruments and items heretofore referred to:

(a) The said Constitution and By-Laws in force and effect during the period from April 1, 1914 through the balance of said year 1914.

(b) The said volumes containing the reports of the proceedings at the conventions of the United Mine Workers of America from the year 1898 to 1916 inclusive.

(c) The minutes of all meetings of the Executive Committee of the United Mine Workers of America, for the years 1912, 1913, 1914 and 1915.

(d) The said volumes containing the issues of the United Mine Workers Journal from 1898 to April 26, 1917
150 inclusive.

(e) The said volumes containing reports of the proceedings of the so called "Joint Conventions" between the representatives of the United Mine Workers of America and of the District Branches in the States of Pennsylvania, Ohio, Indiana and Illinois, and the operators of union mines in said states from the year 1898 to 1916 inclusive.

(f) Said volumes containing reports of the proceedings of the so called "Joint Conventions" between the representatives of the United Mine Workers of America and of the District Branches in the States of Missouri, Kansas, Arkansas, Oklahoma and Texas, and the operators of union mines in said States from 1904 to 1914 inclusive.

(g) All correspondence between John P. White, President of the United Mine Workers of America and the various officers or members of District 21, United Mine Workers of America, between April 1, 1914 and January 1, 1915, includ-

ing all letters written to the said John P. White by any or either of the various officers or members of said District 21, and all copies of any letters written by the said John P. White to any or either of the various officers or members of said district 21 during said period.

(2) That an order be made herein directed against the United Mine Workers of America, and District 21, of the United Mine Workers of America, requiring and compelling said defendants separately and severally to produce or cause to be produced at the trial of this case, the following above referred to.

(a) The District Constitution and By-Laws in force and effect during the period from April 1, 1914 and through the balance of said year 1914.

(b) The reports of the proceedings of the meetings or conventions, including special conventions, of District 21, held on Dec. 14, 1908, May 18, 1914, September 21, 1915, during April in the year 1916, September 15, 1916 and on other such dates in the years 1903 to 1918 inclusive, as meetings,
151 and conventions of said District 21 were held.

(c) Reports of all meetings and proceedings of the Executive Committee of said District 21 during the years 1912 to 1916 inclusive.

(d) All contracts entered into during the year 1912, and in force during March, April, May, June and July of the year 1914, between the United Mine Workers of America, acting through their International officers and also through their District officers, and the union mine operators in District 14, 21 and 25, and including the contract between District 21 miners and union operators located in said District 21.

(e) All reports of all officers of District 21 of the United Mine Workers of America, Presidents, Vice-Presidents, and Secretary-Treasurers thereof, covering the period during the years 1914, 1915 and 1916 inclusive.

(f) The books of account, reports or vouchers showing all disbursements of money made by direction or under the authority of said District 21 during the period from April 1, 1914 to January 1, 1916 inclusive.

(g) All returned checks executed and paid by the several respective banks to which they were directed on account of disbursement of the funds of District 21, United Mine Workers of America, during the period from April 1, 1914 to Jan-

uary 1, 1916, and all check books containing stubs of checks issued for said purposes during said period.

(h) All expense accounts of P. R. Stewart, President of District 21 of the United Mine Workers of America, and Fred Holt, Secretary-Treasurer of District 21 of the United Mine Workers of America, for the year 1914.

(i) List of the members of the respective Local
152 Unions comprising District 21 of the United Mine Workers of America, for the years 1914, 1915 and 1916 inclusive.

(j) All minutes of meetings, communications by officers and members, and reports or vouchers of officers or members, of disbursements by or on account of any and every Local Union situated in District 21 for the period April 1, 1914, to January 1, 1916.

(3) That an order be made herein directed against the United Mine Workers of America, District 21 of the United Mine Workers of America and Local Unions Numbers 340, 374, 560, 586, 1130, 1159, 1526, 1530, 1565, 1810, 1814, 1824, 1842, 1912, 1934, 2027, 2053, 2110, 2160, 2316, 2494, 2766, 2769, 2770, 2772, 2841, 2880, of the United Mine Workers of America, requiring and compelling said defendants separately and severally to produce or cause to be produced at the trial of this case, the following:

(a) Minutes or reports of proceedings of said Local Unions and members and officers thereof during the years 1914, 1915 and 1916 inclusive.

(b) All vouchers, receipts, records of disbursements or reports of officers showing disbursements of said Local Unions above enumerated during the years 1914, 1915 and 1916 inclusive. All returned checks in the possession of any or all said Local Unions theretofore executed and paid by the several respective banks in which the funds of said Local Union were deposited, and to which said checks were directed on account of disbursement of the funds of said Local Union during the period from April 1, 1914 to January 1, 1916, and all said check books containing stubs of checks issued by said Local Unions for said purposes during said period.

(c) Lists of the members of the said United Mine Workers of America comprising the various Local Unions above enumerated during the years 1914, 1915 and 1916.

153 (4) That the court grant to your petitioners all other and further relief to which they are entitled by reason of the facts above set forth, and which shall be deemed proper in the premises and your petitioners will ever pray.

HENRY S. DRINKER, JR.,
JAMES B. McDONOUGH,
Attorneys for Plaintiffs.

Affidavit.

I, Clyde H. Finley, one of the plaintiffs in the above entitled cause, on oath state that I have read over the above and foregoing petition and the matters and things set forth in said petition, so far as my personal knowledge goes, are true and those things which are not known to me to be true are believed to be true.

....,
Notary Public.

Sworn to and subscribed before me this .... day of ....., 1923.

My commission expires:

Certificate.

I, James B. McDonough, do hereby certify that I am one of the attorneys of the plaintiffs in the above entitled cause.

I further certify that I am familiar with the complaint and the answer in this cause, and I, therefore, certify that in my opinion the matters and things called for in the above and foregoing petition are relevant, pertinent and material to the trial of this cause.

JAMES B. McDONOUGH,
Attorney for Plaintiffs.

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154 Order Overruling Motion for Judgment in Favor of Defendant on Mandate.

(Entered in U. S. District Court September 11, 1923.)

Before Judge Youmans.

This day come the plaintiffs by James B. McDonough, their attorney, and come the defendants by Henry Warrum and G. L. Grant, their attorneys, and comes on to be heard the motion of the defendants for judgment on the mandate in the above entitled cause. Said motion being argued by counsel

and submitted, the court being well and sufficiently advised in the premises, doth overrule the same.

To the action of the court in overruling said motion, defendants duly excepted at the time.

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155 Answer and Objections of the United Mine Workers of America to the Petition for Production of Documents and Papers.

(Filed in U. S. District Court September 11, 1923.)

The United Mine Workers of America by way of answer and objections to the petition of C. H. Finley, Receiver, herein filed asking for an order of court requiring the production by defendants of certain papers, books and documents, says that the said petition ought not to be granted or the order therein prayed be made by the court for the following reasons:

1. That the above entitled cause is penal in its nature and the order requiring such production would be in violation of the Fourth and Fifth Amendments of the Federal Constitution.

2. That it appears on the face of said petition under order of court of the former trial of said cause that the defendant under protest produced at the trial the documents which petitioner seeks again to have produced; that the plaintiffs thereupon inspected the same and made such use as they deemed proper thereof at the trial of said cause, that they, therefore, are in possession of copies of said books, documents and papers as shown by said petition, and are not entitled to an order now requiring the defendants to produce any of said books, instruments and documents for the mere purpose of having them authenticated by such production; that having possession of such copies it has been within their power to have the same duly proved and authenticated by other means.

3. That it is apparent upon the face of said petition that the plaintiffs have had heretofore full and complete inspection of said books, instruments and documents at the former trial of said cause, and that thereby they are in position
156 now to state particularly the letter or letters, the issue or issues of the United Mine Workers journal, the volumes of the joint conference proceedings between the United Mine Workers and the Operators of Union Mines in the

states of Indiana, Pennsylvania, and Ohio, the exact volume or volumes of the joint conference proceedings of the United Mine Workers, the particular meeting of the Executive Committee of the United Mine Workers of America; and that it is, therefore, apparent on the face of said petition that the petitioner is again engaged in a roving or fishing expedition which the court by granting the order prayed for would permit.

4. Because it does not appear on the face of said petition that the plaintiffs have not now in their possession copies of the books, papers and documents called for, but on the contrary it appears that they have copies of such books, papers and documents.

5. Because there has been no substantial showing by said petitioner that said books, papers and documents contain any material evidence to support the plaintiffs' cause of action, but on the contrary, as this defendant would show, the testimony introduced by the plaintiffs on the former trial from the books, instruments and documents was produced by the order of the court at that time constituted no evidence to sustain the plaintiffs' cause of action; that the Supreme Court in its opinion upon the appeal from said trial, verdict and judgment, held as follows: "The result of our consideration of the entire record is that there was no evidence submitted to the jury upon which they properly could find that the outrages, felonies and murders of District No. 21 and its companions in crime were committed by them in a conspiracy to restrain or monopolize interstate commerce."

6. That under the order of the court at the former trial the voluminous issues of the United Mine Workers
157 journal were produced, inspected by plaintiffs, and extracts therefrom introduced on said trial, but the Supreme Court said with reference to this testimony: "Communications from outsiders and editorials published in the United Mine Workers journal giving accounts of the occurrences at Prairie Creek and representing that the troubles were due to the aggression of the armed guards of the mine owners and that the action of the union men was justified because in defense of their homes against night attacks do not constitute such ratification by the Board or the president after the fact as to make the International Union liable for what had been done." And the defendant says that an order requiring the production of said issues of the said United Mine Workers journal ought not be made by this court upon

the present showing by the petition, but that it is reasonable and due the defendant that the petitioner should be required to show wherein such evidence may now be pertinent and relevant to the issues presented by his complaint.

7. The defendant further says that upon the order of court it produced at the former trial all correspondence between John P. White, President of the United Mine Workers of America, and the various officers or members of District No. 21, between April 1, 1914, and January 1, 1915, and all the letters asked for in the present petition, and that the same were open to the inspection and use of the plaintiffs at said trial, and that they are familiar with the same, and therefore should be reasonably requested to point out what letters they are entitled to have produced.

8. Because the petitioner and the plaintiffs in the above entitled cause are familiar in detail with the books, documents and instruments which they seek to have produced, and that they should, therefore, be required to point out the exact use and application of the evidence which they seek to thereby secure in its relation to the issues of this cause.

158 II.

This defendant further says with reference to paragraph 2 of the prayer of the petition that it be ordered to produce certain documents relating to District 21 that said order ought not to go against this defendant for the following reasons, in addition to the reasons heretofore given:

That it has not the possession of the District Constitution and by-laws of said District 21, nor the reports of the proceedings of the meetings of the conventions of District 21, held on December 15, 1908, May 18, 1914, or the other dates set out in said petition; nor has it the report of meetings and proceedings of the Executive Committee of said District 21; or contracts entered into in the year 1912 and in force March April, May, June and July, 1914, between Districts 14, 21 and 25 and operators employing union miners therein; nor has it in possession or control the reports of officers of District 21 for the years 1914 to 1916 inclusive, or the books of account, reports or vouchers showing disbursements made by said District from April first 1914 to January first, 1916; or any return checks on account of disbursements of the officers of the District 21 during said period, or check books containing stubs of such checks; or any expense account of P. R.

Stewart, President, of Fred W. Holt, Secretary-Treasurer of District 21 for the year 1914, or any list of the members of the respective local unions comprising District 21 for the years 1914, 1915, and 1916, inclusive, or any minutes of meetings, communications of officers or members, reports or vouchers of officers or members, of any Local Union situated in District 21 for said period, or any minutes or reports of proceedings of said Local Unions and members and officers thereof, or any vouchers, receipts, records of disbursements or reports of officers showing disbursements of said
159 Local Unions during said period, or any return checks in the possession of said Local Unions or check books containing stubs of checks issued by said Local Unions during said period.

Wherefore, this defendant prays the court to overrule said motion to produce, and for all other relief proper in the premises.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

State of Arkansas,
Sebastian County—ss.

I, G. L. Grant, state on oath that I am one of the attorneys in the above entitled cause, and that I have read over the foregoing answer, and that the statements therein are true, as I verily believe.

G. L. GRANT.

Subscribed and sworn to before me on this the 11th day of September, 1923.

WM. S. WELLSHEAR, Clerk,
By R. F. Salzman, D. C.

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160 **Answer and Objections of District 21 of the United Mine Workers of America to the Petition for Production of Documents and Papers.**

(Filed in U. S. District Court September 11, 1923.)

The United Mine Workers of America by way of answer and objections to the petition of C. H. Finley, Receiver, herein filed asking for an order of court requiring the production by defendants of certain papers, books and documents, says that the said petition ought not be granted or the order therein prayed be made by the court for the following reasons:

1. That the above entitled cause is penal in its nature and the order requiring such production would be in violation of the fourth and fifth Amendments of the Federal Constitution.

2. That it appears on the face of said petition under order of court of the former trial of said cause that the defendant under protest produced at the trial the documents which petitioner seeks again to have produced; that the plaintiffs thereupon inspected the same and made such case as they deemed proper thereof at the trial of said cause; that they, therefore, are in possession of copies of said books, documents and papers as shown by said petition, and are not entitled to an order now requiring the defendants to produce any of said books, instruments and documents for the mere purpose of having them authenticated by such production; that having possession of such copies it has been within their power to have the same duly proved and authenticated by other means.

3. That it is apparent upon the face of said petition that the plaintiffs have had heretofore full and complete inspection of said books, instruments and documents at the
161 former trial of said cause, and that thereby they are in position now to state particularly the letter or letters, the issue or issues of the United Mine Workers journal, the volume or volumes of the joint conference proceedings between the United Mine Workers and the Operators of Union Mines in the states of Indiana, Pennsylvania, and Ohio, the exact volume or volumes of the joint conference proceedings of the United Mine Workers, the particular meeting of the Executive Committee of the United Mine Workers of America, and that it is, therefore, apparent on the face of said petition that the petitioner is again engaged in a roving or fishing expedition which the Court by granting the order prayed for would permit.

4. Because it does not appear on the face of said petition that the plaintiffs have not now in their possession copies of the books, papers and documents called for, but on the contrary it appears that they have copies of such books, papers and documents.

5. Because there has been no substantial showing by said petitioner that said books, papers and documents contain any material evidence to support the plaintiffs' cause of action, but on the contrary, as this defendant would show, the testimony introduced by the plaintiffs on the former trial from the books, instruments and documents was produced by the order of the court at that time constituted no evidence to sus-

tain the plaintiff's cause of action; that the Supreme Court in its opinion upon the appeal from said trial, verdict and judgment, held as follows: "The result of our consideration of the entire record is that there was no evidence submitted to the jury upon which they properly could find that the outrages, felonies and murders of District No. 21 and its companions in crime were committed by them in a conspiracy to restrain or monopolize interstate commerce."

162 6. That under the order of the Court at the former trial the voluminous issue of the United Mine Workers journal were produced, inspected by plaintiffs, and extracts therefrom introduced on said trial, but the Supreme Court said with reference to this testimony: "Communications from outsiders and editorials published in the United Mine Workers journal giving accounts of the occurrences at Prairie Creek and representing that the troubles were due to the aggression of the armed guards of the mine owners and that the action of the union men was justified because in defense of their homes against night attacks do not constitute such ratification by the Board or the president after the fact as to make the International Union liable for what had been done." And the defendant says that an order requiring the production of said issues of the said United Mine Workers journal ought not be made by this court upon the present showing by the petition, but that it is reasonable and due the defendant that the petitioner should be required to show wherein such evidence may now be pertinent and relevant to the issues presented by his complaint.

7. The defendant further says that upon the order of court it produced at the former trial all correspondence between John P. White, President of the United Mine Workers of America, and the various officers or members of District No. 21, between April 1, 1914 and January 1, 1915, and all the letters asked for in the present petition, and that the same were open to the inspection and use of the plaintiffs at said trial, and that they are familiar with the same, and therefore should be reasonably requested to point out what letters they are entitled to have produced.

8. Because the petitioner and the plaintiffs in the above entitled cause are familiar in detail with the books, documents and instruments which they seek to have produced, and that they should, therefore, be required to point out the exact use and application of the evidence which they seek to
163 thereby secure in its relation to the issues of this cause.

II.

This defendant further says with reference to paragraph 2 of the prayer of the petition that it be ordered to produce certain documents relating to District 21 that said order ought not to go against this defendant for the following reasons, in addition to the reasons heretofore given:

That it has not the possession of the District Constitution and by-laws of said District 21, nor the reports of the proceedings of the meetings of the conventions of District 21, held on December 15, 1908, May 18, 1914, or the other dates set out in said petition; nor has it the report of meetings and proceedings of the Executive Committee of said District 21; or contracts entered into in the year 1912 and in force March, April, May, June and July, 1914, between Districts 14, 21 and 25 and operators employing union miners therein; nor has it in possession or control the reports of officers of District 21 for the years 1914 to 1916 inclusive, or the books of account, reports or vouchers showing disbursements made by said District from April first 1914 to January first, 1916; or any return checks on account of disbursements of the officers of the District 21 during said period, or check books containing stubs of such checks; or any expense accounts of P. R. Stewart, President, of Fred W. Holt, Secretary-Treasurer of District 21 for the year 1914, or any list of the members of the respective local unions comprising District 21 for the years 1914, 1915, and 1916, inclusive, or any minutes of meetings, communications of officers or members, reports or vouchers of officers or members, of any Local Union situated in District 21 for said period, or any minutes or reports of proceedings of said Local Unions and members and officers thereof, or any
164 vouchers, receipts, records of disbursements or reports of officers showing disgursements of said Local Unions during said period, or any return checks in the possession of said Local Unions, or check books containing stubs of checks issued by said Local Unions during said period, or any list of members of said Local Unions during said period.

Wherefore, this defendants prays the court to overrule said motion to produce, and for all other relief proper in the premises.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

State of Arkansas,
Sebastian County,—ss.

I, G. L. Grant, state on oath that I am one of the attorneys in the above entitled cause, and that I have read over the foregoing answer, and that the statements therein are true, as I verily believe.

G. L. GRANT.

Subscribed and sworn to before me, on this 11th day of September, 1923.

WM. S. WELLSHEAR, Clerk.
By R. F. Salzman, D. C.

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165 Motion to Require the Plaintiffs to Pay Costs and to Secure the Payment of Costs Not Taxed and which May Accrue in the Future.

(Filed in U. S. District Court September 11, 1923).

Come now the defendant, joining together in this motion for convenience only, and severally move the court to require the plaintiffs in this action to pay the costs that have accrued to the defendant on the appeals prosecuted by the defendants to the United States Circuit Court of Appeals for the Eighth Circuit and to the Supreme Court of the United States; also to pay the costs already incurred on the trial of the case in the District Court, or to secure the same, and to secure the payment of the costs that may arise on the future trial of the case, in the United States District Court and the appellate courts, and for grounds of said motion these defendants severally state:

I.

1. That this action was originally begun by permission of the United States District Court for the Western District of Arkansas, Fort Smith Division, sitting in Equity, in Equity cause No. 246, upon an application filed by Franklin Bache, Receiver of the plaintiff companies in which the said receiver represented to the court that the plaintiffs had a valid cause of action against the defendants, and that the said receiver should and ought to bring suit against the defendants for the sums of money set forth in a copy of the original complaint filed herein, which was attached to the application of the receiver. In said application the receiver further stated to the court that in his opinion the said cause of action was a valuable asset to the plaintiffs companies, and that a suit for dam-

ages should be brought in this court. That said appli-
166 cation was made under the oath of the said Franklin Bache, receiver, said application and oath being in writing and the original thereof being on file in this court in said Equity cause No. 246, a copy of which is attached hereto and made a part of this motion, being marked "Exhibit A" hereto.

2. That immediately after the court granted permission to the said Franklin Bache to file said suit, a complaint was filed in this court, in this cause, by the said Franklin Bache as receiver of said companies, and by the nine plaintiff companies in which the said receiver and companies, as plaintiffs, prayed a judgment against these defendants for an alleged violation of the Sherman Anti-Trust Laws and amendments thereto. That thereafter the said F. Bache resigned as such receiver and one Andrew Dowd was appointed in his stead and as the successor of said Bache as trustee the said Andrew Dowd proceeded with said litigation. That the defendants severally interposed a demurrer to the complaint aforesaid, and to the amended complaints, and the said demurrer was sustained and the cause dismissed, the court sustaining said demurrer upon the ground that the complaint failed to show a violation of the Federal Anti-Trust laws and for that reason failed to show that the United States District Court had jurisdiction of the cause of action. That thereafter, the plaintiffs obtained a review of said cause by the United States Circuit Court of Appeals, Eighth Circuit, and that court reversed the holding of the District Court, after which the cause went to trial in said District Court, resulting in a verdict and judgment in favor of the plaintiffs in the sum of $600,000, together with interest added thereto, and attorneys fee and costs of the action. That thereafter the said defendants obtained writs of error and the said judgment was reviewed by the United States Circuit Court of Appeals, Eighth Circuit, and affirmed with modifications; that thereafter the defend-
ants obtained other writs of error and said cause was
167 reviewed by the Supreme Court of the United States and upon such review that Court reversed said cause, the Supreme Court holding that the District Court should have sustained the motion of the defendants for a directed verdict, and held that under the evidence the United States Court was without jurisdiction of the cause, and further ruled that the United Mine Workers of America, the National Union, and District No. 21 of the United Mine Workers of America, the District Union, and the Local Unions that were defendants in the cause and the individual persons named as defendants

therein were not liable under the evidence. The defendants state that said cause has been heard fully and the issues developed fully by the evidence in the case.

3. These defendants state that it was expensive for them to appeal said cause to the Circuit Court of Appeals and to the Supreme Court of the United States; that they were required to have voluminous records printed, and to pay other heavy costs and expenses, and to employ expensive attorneys to present and argue said cause in said appellate courts; that this court has already entered judgment against the plaintiffs, in favor of the defendants, for costs of the appeal, the costs allowable being on only such costs as were incurred on the appeal and not the costs of the trial, which must abide the final outcome of the case; that the amount of costs so awarded the defendants is $..... and that the plaintiffs have demanded payment of such award upon the receiver but he has failed and refused to pay the same.

4. That the plaintiffs have demanded a retrial of this case and it has been set down for trial on the 15th day of October, 1923 and a special judge has been assigned to preside over the trial. That the trial of the cause in the District Court,
168 and in the appellate courts, if appealed, will be very expensive; that the expense of investigation, locating witnesses and interviewing them, taking depositions, paying attorneys fees, paying stenographers, United States Marshal's fees, Clerk's fees and other court costs, and paying the expense of getting witnesses to court, will amount to many thousands of dollars; that the witnesses are scattered over many states and the expense of preparing for trial and trying the case anew will be many thousands of dollars; that these defendants honestly believe that the United States District Court is without jurisdiction of this cause, and of the defendants in this action, as has been determined by the Supreme Court of the United States, and they honestly believe that, under the law as declared by the Supreme Court of the United States, the plaintiffs herein cannot successfully maintain their alleged cause of action against the defendants herein.

5. These defendants severally state that the plaintiff companies have shown by their receivership proceedings that they are insolvent, and that they are without assets to pay costs of this case; that their assets have been sold under orders of the court at public and private sale, to Mr. Charles Henry, of Philadelphia, Pennsylvania, and others; that the said Mr. Henry has bought many claims against said com-

panies and in favor of said companies, including a claim of the Sebastian County Coal Company against one Franklin Bache, for the sum of $30,392.61, and that he has bought equities in lands and lands and property of the companies; that he has paid nominal sums therefor, paying only $100.00 for the said claim against the said Bache; that after the said Henry Acquired said claims against the said plaintiff companies, he conveyed and sold to the Kali Inla Coal Company, a West Virginia Corporation, owned almost entirely by the said Franklin Bache, a large amount of said claim. That the
order of the court directing said receivers to sell said
169 property, including the claim of $30,392.61 due by
Franklin Bache to the Sebastian County Coal Company, was made on January 6th, 1919, and appears of record in Record Book #8, at page 608 et seq. of the Records of said Court, and particular reference is made thereto and the defendants ask to read said order on the hearing of this motion. That the order of court, approving the public sale of said property, was made on January 6th, 1919, and appears of record at page 609 et seq. of Record Book #8 of the Records of said court, and particular reference is made thereto and the defendants will ask to read said order on the hearing of this motion. That the order of the court, approving the transfers and conveyances of the property and claims to the said Charles Henry, Jr., were made on January 6th, 1919, and appear of record in Record Book #8, pages 607 and 610 of the records of said court. Specific reference is made to said orders and these defendants will ask to read said orders on the hearing of this motion. That the said Charles Henry, Jr., and the said Kali-Inla Coal Company are the owners of the assets of the plaintiff companies and are the owners and holders of the claims against them, and that the claims of the two said parties against said plaintiff corporations are more than $400,000.00, and that the claims held by the said Henry, are, as these defendants are advised and believe, preferred claims, and take precedence over the claims of general creditors of said plaintiff corporations, as declared in the order of court made January 6th, 1919 and of record in Record Book #8, page 598, of the Records of this Court, Specific reference is made to said order and the defendants will ask to read same on the hearing of this motion. These defendants further state that the said Franklin Bache is President and owns 509 shares of the capital stock of the Kali-Inla Coal Company; that J. C. Brown, of Philadelphia, Penn., is sec-
170 retary and owns 90 shares of the capital stock of said
corporation; and that C. H. Finley, the receiver and plaintiff in this action, is treasurer and owns one share of

the capital stock of said Kali-Inla Coal Company; that the said corporation is capitalized at $60,000.00 all of which has been fully paid, and that it has assets in the sum of $914,774.-68 as shown by its annual statement under oath filed in the office of the Secretary of State of the State of Oklahoma in July, 1923, a certified copy of which these defendants will offer in evidence on the hearing of this motion. That the Kali-Inla Coal Company and the said Henry are the beneficiaries of any judgment that could be rendered against these defendants in this action. That the said plaintiffs are able, by and through the said Henry and Kali Inla Coal Company, to pay the costs and secure the payment of the future costs of the case.

6. These defendants state that it is apparent, from the decision of the Supreme Court of the United States, that the plaintiffs have no valid cause of action against the defendants, and that in reality no such cause of action existed in their favor at the time this court permitted the receiver to sue these defendants, and that if this court has known the facts as they now appear from the decision of the Supreme Court of the United States and from the record of this case, it would not have permitted the plaintiffs to institute or prosecute said cause. The defendants further state that under the facts and the law applicable to this case, there is no reasonable probability of the plaintiffs recovering a valid judgment against the defendants on a retrial of this cause, and that if plaintiffs insist upon a retrial they ought to be required to pay the costs already accrued in favor of the defendants as adjudged by the court, and should also be required to give bond for the payment of any future costs, and all costs herein, in this court or in any other court that it may be appealed to, and in event of their failure to do so the cause should be dismissed.

171 II.

The defendants severally would further show the court that the parties for whom this suit is brought are corporations and that under the statutes of Arkansas they should be required to furnish security for costs.

III.

Defendants would further show the court that C. H. Finley, the receiver, who is suing for and on behalf of said corporations, has removed from the State of Arkansas since his appointment as receiver and is now a citizen and resident of the

State of Oklahoma, and is therefore required to give security for costs.

Wherefore, defendants pray that the plaintiffs be required to pay all costs awarded them by the order of this court, to-wit: $7,278.10, and to give bond to secure the payment of the other costs and all future costs of this cause, and in the event of the plaintiff's failure to do so within a reasonale time to be fixed by the court, that this cause be dismissed and for all proper relief hereunder.

HENRY WARRUM
G. L. GRANT,
Attorney for Defendants.

State of Arkansas,
Sebastian County—ss.

I, G. L. Grant, on oath state that I am one of the attorneys for the defendants in the above styled cause; that the matters and things set forth in the foregoing motion are true as I verily believe.

. . . . . .

Subscribed and sworn to before me on this the 16th day of August, 1923.

. . . . . .

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172 Order Sustaining Motion for Costs to the Extent of Requiring Plaintiffs to Give Bond for Future Costs Within Ten Days.

(Entered in U. S. District Court September 11, 1923.)

Before Judge Youmans.

On this the 11th day of September, 1923, there is filed and submitted to the court the motion of the defendants to require the plaintiff to secure the cost in this action by giving a bond therefor, and also to require the plaintiff to pay all court costs of the former trial, heretofore adjudged against him, and in default thereof to dismiss said cause. And said motion having been considered by the Court, and the court being well and sufficiently advised in the premises, is of the opinion that the motion should be sustained to the extent of requiring the plaintiff to give bond for the future costs for the reason that it appears to the court from said motion and from the admission of C. H. Finley, receiver herein, made in open court upon the hearing that he had removed from this District and State, and was now a citizen and resident of the State of Oklahoma.

It is therefore by the court considered, ordered and adjudged that the plaintiff, C. H. Finley, as Receiver, be and he is hereby required and ordered to file within ten days from this date a cost bond with sufficient surety to be approved as the law directs. Receiver excepts to order of court in requiring cost bond and saves his exceptions.

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173 Motion of Defendants for Production of Books.

Filed in U. S. District Court Sept. 13, 1923.

To the Honorable District Court:

Your petitioners, the defendants in the above entitled cause, severally petition and show to the Court:

That the books of the plaintiffs, companies, hereinafter more particularly designated, contain evidence showing that said companies had not during their respective periods of existence operated at any profit; showing expenditures of moneys by them and on their behalf and the execution by them of notes, including accommodation papers among said several companies, by them and between them and with the Kali-Inla Coal Company, and that these documents are in the sole possession of the plaintiff in this cause and of C. H. Finley, Receiver of said plaintiff, corporations, serving as such receiver under decree of this court; that said books and documents contain evidence pertinent to the issues of this cause, and will disclose the amount of funds invested in the mines of said plaintiff companies and their various properties, and that their inspection and use on the trial of this cause by the defendants is important, in that they contain the original entities and evidence pertinent, relevant and material to the issues of this cause, tending to support the contention of the defendants herein.

That the petitioners, defendants, have neither the original nor copies of such papers and cannot procure the same except by order of this court, but that the plaintiffs have in their possession, custody and control such books, papers and
174 documents that such books, documents and papers are as follows: The books of the plaintiffs, Coronado Coal Company, Denman Coal Company, Mammoth Vein Coal Company, Bache-Denman Coal Company, Hartford Coal Company, Sebastian County Coal Company, Mammoth Vein Coal Mining Company, Mammoth Vein Royalty Coal Company, Prairie Coal Mining Company, and each of them, respectively, to-wit:

1. The stock book, stock ledger or other books showing the issuance, transfers and holdings of outstanding stock, and the book showing the amount received for any amount of stock issued;

2. The minutes of stock holders and directors' meetings of the several companies, both regular and special;

3. Ledgers and journals, cash books and other books of accounts showing all receipts and disbursements of the plaintiff, companies, their bills receivable, bills payable, accounts, notes and all transactions of said companies; and the books and accounts showing the transactions between said companies and each of them, and the Kali-Inla Company; ;

4. Leases, inventories and lists of property owned, leased and held by said plaintiff, companies, and each of them, together with any mortgages or incumbrances thereon.

Wherefore, the petitioners severally pray that this court do now order the plaintiffs to produce at the beginning of the trial of said cause for inspection and use of the defendants on said trial said several books and documents, above enumerated, and pray that an order be made directing the plaintiffs and C. H. Finley, Receiver, to so produce said books, documents and papers.

HENRY WARRUM,
G. L. GRANT.
Attorneys for Defendants.

175 State of Arkansas,
Sebastian County—ss.

I, G. L. Grant, one of the attorneys for the defendants in the above entitled cause, on oath do state:

That I have read over the foregoing motion, and the matters and things set forth therein are, so far as my personal knowledge goes, true, and those things which are not known to me to be true are believed to be true; and that I make this affidavit on behalf of said defendants.

G. L. GRANT.

Subscribed and sworn to before me on this the.....day of September, 1923.

.....
Clerk.

I, G. L. Grant, do hereby certify that I am one of the attorneys of the defendants in the above entitled cause; that I am familiar with the complaint and answer in this cause,

and that I therefore certify that in my opinion the matters and things called for in the above and foregoing petition are relevant and pertinent and material to the trial of this cause.

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176 Order Requiring C. H. Finley, Receiver, to Produce Books, Etc.

(Entered in U. S. District Court September 13, 1823.)

Before Judge Youmans.

Come the defendants and by leave of the court file their petition for production of books, papers and documents in the above cause, and also come the plaintiffs and defendants by their counsel, and the defendants severally present their said petition for an order requiring C. H. Finley, Receiver, to produce at the trial the books, papers and documents of the plaintiff corporations, and said petition is heard by the court; and

The court being sufficiently advised in the premises, it is considered, ordered, and adjudged by the court that C. H. Finley, Receiver of the plaintiff corporations, be and he is hereby ordered and directed to produce on October 15, 1923, and at the beginning of the trial of said cause for the inspection, use and examination of the said defendants and their counsel the following books, documents and papers, to-wit:

1. The stock books, stock ledger or other books showing the issuance, transfers and holdings of outstanding stock, and the book showing the amount received for any amount of stock issued;

2. The minutes of stockholders and directors meetings of the said several companies, both regular and special;

3. Ledgers and journals, showing all receipts and disbursements of the plaintiff, companies, their bills receivable, bills payable, accounts, notes and all transactions of said companies; and the books [and] and accounts showing
177 the transactions between said companies and the Kali-Inla Coal Company;

And the court reserves the right to the plaintiffs upon the offer and use of any of said books and documents by the defendant on the trial to object to the materiality, competency, relevancy and admissibility of such offers as may be made,

and the plaintiffs at the time duly excepted and saved their exceptions to the ruling of the court in requiring the production of said books, papers and documents.

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178 Amendment to Answer and Objection of United Mine Workers of America.

(Filed in U. S. District Court September 17, 1923.)

The United Mine Workers of America, by leave of the court, file this their amendment to their separate answer and objection to the petition of the plaintiffs for an order for a production of books and papers, and say:

1. That with reference to the second paragraph of plaintiffs' petition the said defendant says that during the period from April 1, 1914, through the balance of said year 1914 the said defendant, International Association of the United Mine Workers of America had in force and effect but one constitution and by-laws, a copy of which was attached to the deposition of William Green, which is now on file in said cause and which was used in said former trial hereof, and that it has no other or further constitution and by-laws for said period.

Wherefore, defendant prays that this amendment be taken as a part of the original answer and objection.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

State of Arkansas,
County of Sebastian—ss.

I, G. L. Grant, on oath do state:

That I am one of the attorneys for the defendant, above named, and that the matters and things set forth in the foregoing amendment to the answer and objection of said defendant is true, as I verily believe.

G. L. GRANT.

Subscribed and sworn to before me this the 17th day of September, 1923.

WM. S. WELLSHEAR, Clerk.

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179 Amendment to Answer and Objections of District No. 21.

(Filed in U. S. District Court September 17, 1923.)

The District No. 21 of the United Mine Workers of America, by leave of the Court, files this its amendment to its answer and objection to the petition of the plaintiffs for an order for production of books and papers, and says:

1. That from April 1, 1914, through the year 1914, the defendant, District No. 21 of the United Mine Workers of America had in force a fully adopted District Constitution and By-Laws; that said district constitution and by-laws were introduced in evidence, and are part of the record of said former trial, and that the said District No. 21 has no other constitution or by-laws for said period which it can produce at the next trial of said cause.

Wherefore, said defendant prays that this amendment be taken as a part of its original answer and objections.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendant.

State of Arkansas,
County of Sebastian—ss.

I, G. L. Grant, on oath, do state:

That I am one of the attorneys for the defendant, above named, and that the matters and things set forth in the foregoing amendment to the answer and objections of said defendant are true, as I verily believe.

G. L. GRANT.

180 Subscribed and sworn to before me on this the 17th day of September, 1923.

WM. S. WELLSHEAR, Clerk.

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181 Order of Plaintiffs' Motion for Production of Papers, Sustaining in Part and Denying in Part.

(Entered in U. S. District Court September 19, 1923.)

Before Judge Youmans.

On this day there came on for hearing the petition of plaintiffs for an order requiring the defendants to produce certain documents and papers. The plaintiffs appeared by their attorney, James B. McDonough, and the defendants appeared by their attorneys, G. L. Grant, and Henry Warrum. The said petition was taken up by paragraphs.

Paragraph II. The court refuses the request made in Paragraph II on the ground that the defendants have denied un-

der oath the existence of the documents referred to in Paragraph II, and allege that the only constitution is the one in evidence.

Parapraph III. Upon consideration of Parapraph III, the court finds that the documents therein were produced at the former hearing of this cause and a part of the same introduced in testimony. The court, therefore, finds that said documents as they appear in the former record may be offered as the originals. By reason of said documents and papers referred to in said Paragraph III being in the record, the court is of the opinion that it is not necessary to produce the originals again for the purpose of using the same as evidence. The plaintiffs are given the right to offer in evidence the copies already in the record, and the right is reserved to the defendants to object to the introduction of said documents on the ground of irrelevancy and immateriality and admissibility.

Paragraph IV. As to paragraph IV, the court denies the prayer of said paragraph and the plaintiffs except.

Paragraph V. As to Paragraph V, the court makes
182 the same ruling as to the documents therein referred to as has been made as to Paragraph III above.

Paragraph VI. As to Paragraph VI, the court makes the same ruling as has been made in Paragraph III above.

Paragraph VII. As to Paragraph VII, the court denies the prayer of that paragraph, and the plaintiffs except.

Paragraph VIII. The court denies the prayer of said paragraph on the ground that the defendants, under a sworn response, deny the existence of the documents therein referred to, and the constitution in evidence is only one.

Paragraph IX. As to Paragraph IX, the court makes the same ruling as to Paragraph III.

Paragraph X. As to paragraph X, the court makes the same ruling as to Paragraph III.

Paragraph XI. As to paragraph XI, the court denies the prayer of that paragraph on the ground that the defendants deny under oath, the existence of any such document, and the constitution in evidence is only one.

Paragraph XII. As to Paragraph XII, the court makes the same ruling as to Paragraph III.

Paragraph XIII. As to Paragraph XIII, the court makes the same ruling, applying the same to District 21 as has been made with reference to Paragraph III.

Paragraph XIV. As to Paragraph XIV, the court makes the same ruling, as to District 21, as to Paragraph III.

Paragraph XV. As to Paragraph XV, the court makes the same ruling, as to District 21, as is made in Paragraph III.

183 Paragraph XVI. As to Paragraph XVI, the court makes the same ruling as to Paragraph XV.

Paragraph XVII. As to Paragraph XVII, the court makes the same ruling as to Paragraph XV.

Paragraph XVIII. Same as XV.

Paragraph XIX. As to Paragraph XIX, the court makes the same ruling as to Paragraph III.

Paragraph XX. As to Paragraph XX, the court denies the prayer of that paragraph, and the plaintiffs except.

Paragraph XXI. As to Paragraph XXI, the court makes the same ruling, as to the locals, as made in Paragraph III.

Paragraph [XXIII]. In Paragraph XXII, the court makes the same ruling as to the locals as in Paragraph III.

The plaintiffs except to each ruling of the court on each of the paragraphs concerning which the court made a denial of the prayer of the paragraph. The right is reserved to the defendants to offer in testimony, parts of said records by way of cross examination. The right is reserved to each party to object to the offer of evidence on either side from said documents and papers on the ground of immateriality and irrelevancy.

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184 **Cost Bond.**

(Filed in U. S. District Court Sep. 19, 1923.)

We, the undersigned, undertake that the plaintiffs in this cause shall pay to the defendants, and to the officers of the court, all future costs that may accrue to the defendants in

this action, either in this court or in any other court to which the same may be carried.

CLYDE H. FINLEY, Receiver,
AMERICAN SURETY COMPANY,
By Allan Kennedy, Resident Secretary, (Seal)
H. P. Warner, Resident Vice President.

Cost bond approved:
Frank A. Youmans.

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185 Supplemental Petition for Reproduction of Certain Documents and Papers.

Filed in U. S. District Court October 5, 1923.

Supplemental Petition for the reproduction upon retrial of certain documents and papers, and dispensing with the reproduction of certain documents previously produced.

Comes now your petitioner, C. H. Finley, who respectfully represents:

That the Supreme Court of the United States, bases on the trial already had in this case, has decided the following points against your petitioner:

I. That on the facts the National Union was not liable since it was not shown to have authorized or participated in the strike in question.

II. That District 21, while legally responsible for the injury done to these plaintiffs, is not liable in the present action, since the record contains no evidence to warrant the Jury in finding that the officers of District 21 who engineered the destruction of plaintiff's property were actuated by an intent to restrain or monopolize interstate commerce.

At the same time the Supreme Court remanded the case to your honorable Court for further proceedings in conformity with its opinion.

That your petitioner expects to prove upon such "further proceedings" that the National Union did authorize and did participate in the strike, and that the officers, as well as the individual members of District 21, who participated in the de-

struction of your petitioner's property were actuated
186 by an intent to restrain or monopolize interstate commerce.

That at the previous trial your petitioner caused to be introduced into the record certain documents, writings, papers and etc., produced by Defendants upon order of the Court.

That if in connection with the re-trial your petitioner may be considered entitled to rely on such previous introduction of said original documents, and may be permitted at the re-trial to re-offer in evidence any extracts or quotations therefrom, which are now contained in the record, as fully as if the extracts or quotations so to be re-offered were taken direct from the original documents themselves, then as your petitioner is presently advised (reserving, however, the right to make further application if circumstances warrant the same) it will not be necessary to require defendants to produce at the new trial, under the orders of Court now in effect, certain of the said original documents.

On the other hand, in connection with the additional proof which your petitioner is obliged to adduce in order to show the participation of the National Union, as well as the motive and intent of the officers and individual members of District 21 while engaged in the destruction herein complained of, it is extremely important and essential to your petitioner's case that certain of the original documents be produced by defendants upon the re-trial hereof.

While extracts from certain documents hereafter enumerated are contained in the Record of the former trial, said documents contain additional matter which was not then deemed necessary to the development of plaintiffs case therein, but which the opinion of the Supreme Court has demonstrated to be most important thereto in establishing the connection of the National organization with the destruction of plaintiffs property and in showing the motive and intention of the union officers and members in bringing about the same.

187 The records previously produced which plaintiffs deem it necessary to have in order to offer therefrom extracts not contained in the original record as follows:

1. International Executive Board minutes for all meetings of said Board held during the year 1914.

2. United Mine Workers Journals published during the years 1910 to 1916, inclusive.

These volumes were actually offered in evidence, in the former trial, being certain of the journals marked plaintiffs Exhibits 31a to 31z, inclusive and 31aa to 31cc in connection with the deposition of William Green as appears at pages 341 and 342 of said original deposition on file.

3. Included in said period, general and special conventions were held on May 18, 1914, at Fort Smith, Arkansas, September 21, 1915, at McAllester, Oklahoma; April 18, 1916 at Fort Smith, Arkansas, and on other dates during said years to your petitioner unknown.

4. Reports of all Officers of District 21 of the United Mine Workers of America, Presidents, Vice-Presidents and Secretary-Treasurers of said District, covering the period from 1914 to 1916, inclusive.

5. Expense accounts for the year 1914 of P. R. Stewart and Fred Holt, respectively President and Secretary-Treasurer of District 21 of the United Mine Workers of America.

6. All return checks paid by the several banks, to which they were directed on account of disbursements of the funds of District 21 of the United Mine Workers of America,
188 and all check books containing stubs of such checks during the period from April 1, 1914 to January 1, 1916.

The foregoing documents are not otherwise available to your petitioner, and your petitioner is again willing, as he was at the former trial, to bear all expense incident to the production of these books and documents.

Wherefore your petitioner prays that an order be granted under section 724 of the Statutes of the United States, requiring the production by defendants at the trial of this cause of the documents above specified.

And your petitioner will ever pray.

H. S. DRINKER, Jr.
JAMES B. McDONOUGH
Attorneys for Plaintiffs.

Affidavit.

I, Clyde H. Finley, Receiver, one of the plaintiffs in the above entitled cause, on oath state that I have read over the above and foregoing supplemental petition and the matters and things set forth in said supplemental petition, so far as

my personal knowledge goes, are true and those things which are not known to me to be true are believed to be true.

Sworn to and subscribed before me this 5th day of October, 1923.

CLYDE H. FINLEY, Receiver

ANNA ALTMILLER
(Seal) Notary Public.

189 Certificate.

I, James B. McDonough, do hereby certify that I am one of the attorneys of the plaintiffs in the above entitled cause.

I further certify that I am familiar with the complaint and the answer in this cause, and I, therefore, certify that in my opinion the matter and things called for in the above and foregoing supplemental petition are relevant, pertinent and material to the trial of this cause.

JAMES B. McDONOUGH
Attorney for Plaintiffs.

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190 Supplemental Petition for Production of Documents and Papers.

Filed in U. S. District Court Oct. 5, 1923.

Comes now your petitioner, C. H. Finley, who respectfully represents:

That the Supreme Court of the United States, based on the trial already had in this case, has decided the following points against your petitioner:

I. That on the facts the National Union was not liable since it was not shown to have authorized or participated in the strike in question.

II. That District 21, while legally responsible for the injury done to these plaintiffs, is not liable in the present action, since the record contains no evidence to warrant the Jury in finding that the officers of District 21 who engineered the destruction of plaintiffs' property were actuated by an intent to restrain or monopolize interstate commerce.

At the same time the Supreme Court remanded the case to your honorable Court for further proceedings in conformity with its opinion.

That your petitioner expects to prove upon such "further proceedings" that the National Union did authorize and did participate in the strike, and that the officers, as well as the individual members of District 21, who participated in the destruction of your petitioner's property were actuated by an intent to restrain or monopolize interstate commerce.

That in developing such additional proof certain writings, documents and papers now in possession of the defendants, and not heretofore produced in this proceeding, are
191 relevant and material to the issues involved herein.

The following writings, documents and papers were not requested or ordered to be produced upon the former trial, but are of the same general nature as the documents previously produced, and are now of the utmost importance in the light of the opinion of the Supreme Court:

(a) International Executive Board meeting minutes for all meetings of said Board held during the years 1912, 1913 and 1915.

(b) The minutes or reports of the so-called Southwestern joint convention or conference proceedings, being type-written or printed minutes or records of the meetings held during the years 1903 to 1914, inclusive, between representatives of the United Mine Workers of America and of certain subordinate branches thereof, more particularly Branch Districts 21, 14 and 25 of the United Mine Workers of America, and the operators of Union mines in the States of Missouri, Kansas, Arkansas, Oklahoma and Texas.

Included in said years, there were held said joint conventions or conferences as above described on July 13, 1903, Pittsburgh, Kansas; on August 18 to September 2, 1903, at Ft. Smith, Arkansas (involving only District 21, Arkansas and Indian Territory); July 12, 1904, at Pittsburgh, Kansas; during the year 1906 at a date and place to your petitioner unknown; April 6, 1908, at Kansas City, Missouri; February 23, 1910, at Kansas City, Missouri; March 1, 1912, June 8, 1914, at Kansas City, Missouri, and on other dates during the said years to your petitioner unknown.

(c) District 21 convention proceedings for the years 1903 to 1913, inclusive, and the year 1917 and 1918.

Included in the period 1903 to 1913 and 1917 to 1918, general and special conventions were held on August 13 to the 18th, 1903, at Ft. Smith, Arkansas; December 14, 1908,
192 at Ft. Smith, Arkansas; November 9, 1910, at McAlester, Oklahoma; February 21, 1912 at McAlester, Ok-

lahoma; May 18, 1914, at Ft. Smith, Arkansas; September 21, 1912 at McAlester, Oklahoma; May 18, 1914, at Ft. Smith, Arkansas; September 21, 1915, at McAlester, Oklahoma; April 18, 1916, at Ft. Smith, Arkansas; January 2, 1918, at Ft. Smith, Arkansas; and on other dates during said years to your petitioners unknown.

The proceedings for the additional years now being requested, will complete the period during which conventions have been held by said District 21 of the United Mine Workers of America, since the origin of said District.

(d) District 21 Executive Board or Executive Committee meeting minutes for all meetings of said District Executive Board or Committee held during the years 1912 to 1916, inclusive.

The minutes of the International Board meetings for the years 1912 and 1913 are material and revelant since full authority is vested in said Board or Committee during the two-year periods between the biennial conventions. The two years above mentioned, vis., 1912 and 1913, compose the two-year period subsequent to the national convention of 1912, and immediately preceding the strike involved herein. The 1912 convention proceedings were ordered produced at the first trial. The Board minutes now requested supplement the 1912 convention proceedings in that the Executive Board or Committee succeeded to full authority upon adjournment of the said convention. The minutes of said International Board or Executive Committee for the year 1915 are equally important since they supplements the minutes for 1914, previously produced by Defendants, and cover the two-year period, in part contemporaneous with, and in part immediately subsequent to the strike.

Petitioner avers that the said International Executive Board minutes for the years [inumerated], including 1914, which was previously produced by Defendants, will
193 show that the acts herein complained or were committed for the purpose and with the intent of restraining and monopolizing interstate commerce, and that said acts were duly authorized and ratified by said International Board or Executive Committee as the governing body of the International Union and were in pursuance of its object and policy. Both of said points are essential to petitioner's case as is apparent from the Supreme Court's opinion.

Similarly, the joint conference proceedings in the so-called Southwestern field between defendants and union operators,

are relevant and material, since they include District 21. The proceedings in question are similar to those involved in the so-called Central Competitive Field, the entire proceedings of which were produced upon the first trial, and are all the more important and competent since they apply specifically, to the territory or field in which plaintiff's coal mines are located.

Likewise, the proceedings of the conventions held by District 21 of the United Mine Workers of America for the additional years above mentioned, are relevant and material since they supplement the convention proceedings of the particular years (1914 to 1916, inclusive) already produced by the Defendants upon the former trial. Said district convention proceedings for the additional years are pertinent, relevant and material to the issues as they will exist upon retrial under the Supreme Court's opinion, in that they will show a continuity of purpose, and an object and intent to interfere with and restrain interstate commerce, existing on the part of these Defendants when said Defendants committed the acts alleged in the complaint, which object and intent was said by the Supreme Court to have been insufficiently proved on the previous trial of this case. The aforesaid object and intent with which said Defendants caused to be done the damage herein complained of, was in ac-
194 cordance with the general policy formulated and expressed at said conventions and special conventions, during all the years from 1903 to 1914, inclusive. Said general policy was likewise to prevent the shipment to market of any coal mined by open-shop mines in said District 21 of the United Mine Workers of America.

These additional documents petitioned for herein, are of the same general nature as the documents ordered produced by your honorable Court, upon the previous trial of this cause, which action was sustained upon the appeal taken to the Circuit Court of Appeals for the Eighth Circuit. No ruling was made on this point by the Supreme Court of the United States on the subsequent appeal taken to the later Court from the Circuit Court of Appeals.

These additional documents are not otherwise available to your petitioner, and your petitioner is again willing, as he was at the former trial, to bear all expense, incident to the production of these books and documents.

The considerations set forth herein, are in addition to the full discussion, appearing in the petition already filed. Your

petitioner respectfully prays that, upon consideration of these additional reasons, along with the foundation already existing, your honorable Court will cause the new documents above enumerated, to be produced upon the further trial of this cause, under Section 724 of the Statutes of the United States.

H. S. DRINKER, Jr.
JAMES B. McDONOUGH
Attorney for the Plaintiffs.

195 **Affidavit**

I, Clyde H. Finley, Receiver, one of the plaintiffs in the above entitled cause, on oath state that I have read over the above and foregoing supplemental petition and the matters and things set forth in said supplemental petition, so far as my personal knowledge goes, are true and those things which are not known to me to be true are believed to be true.

CLYDE H. FINLEY, Receiver.

Sworn to and subscribed before me this 5th day of October, 1923.

(Seal) ANNA ALTMILLER
Notary Public.

My commission expires: .....

Certificate

I, James B. McDonough, do hereby certify that I am one of the attorneys for the plaintiffs in the above entitled cause.

I further certify that I am familiar with the complaint and the answer in this cause, and I, therefore, certify that in my opinion the matter and things called for in and above and foregoing supplemental petition are relevant, pertinent and material to the trial of this cause.

JAMES McDONOUGH
Attorney for Plaintiffs.

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196 **Answer and Objections of United Mine Workers of America to Supplemental Petition for Production of Books and Documents.**

Filed in U. S. District Court October 5, 1923.

The United Mine Workers of America, International Union, by way of answer and objection to the petition of C. H.

Finley, Receiver, asking for the production of certain books and documents filed October 5, 1923, says:

That said petition should not be granted or said order made as therein prayed, for the following reasons:

1. That the above entitled cause is penal in its nature, and the order requiring such production would be in violation of the Fourth and Fifth Amendments to the Federal Constitution.

2. That it is apparent upon the face of said petition and the record in this cause that the plaintiffs have had full and complete inspection of said books, papers and documents at the former trial of said cause, and is thereby in position to state particularly the executive board minutes or the issue or the issues of the United Mine Workers' journal which they desire to have produced.

3. That it does not appear on the face of said petition that the plaintiffs have not now in their possession copies of said executive board minutes or of the said United Mine Workers' journal.

197 Wherefore, the defendants pray the Court to overrule the said motion, and for all proper relief in the premises.

HENRY WARRUM
G. L. GRANT
Attorneys for Defendants.

State of Arkansas,
County of Sebastian—ss.

I, G. L. Grant, do hereby state on oath that I am one of the Attorneys for the defendants in the foregoing cause, and that I have read over the same, and that the statements contained therein are true, as I verily believe.

G. L. GRANT

Subscribed and sworn to before me on this 5th day of October, 1923.

WM. S. WELLSHEAR
Clerk.

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198 Answers and Objections to Supplemental Petition for Order Requiring Defendant, District No. 21, to Produce Books and Documents.

(Filed in U. S. District Court October 5, 1923.)

District No. 21, of the United Mine Workers of America, by way of answer and objection to the petition herein filed by plaintiffs, asking for an order requiring the production of certain papers, books and documents, says:

1. That the above cause is penal in its nature, and that the order requiring the production of said books and documents would be in violation of the Fourth and Fifth Amendments of the Federal Constitution.

2. That it is apparent upon the face of said petition that the plaintiffs have had full and complete inspection of said books and documents at the former trial of said cause, and that as they do not now point out the particular book or documents or check asked for, they are now engaged in a roving expedition which the court should not permit.

3. Because it does not appear upon the face of said petition that said plaintiffs have not now in their possession copies of the books, papers and documents called for.

Wherefore, defendants pray that the motion be overruled, and for all proper relief in the premises.

HENRY WARRUM
G. L. GRANT,
Attorneys for Defendants.

State of Arkansas
County of Sebastian—ss.

I, G. L. Grant, do hereby state on oath:

199 That I am one of the attorneys for the defendants in the foregoing cause, and that I have read over the same, and that the statements contained therein are true, as I verily believe.

G. L. GRANT.

Subscribed and sworn to before me on this the 5th day of October, 1923.

WM. S. WELLSHEAR, Clerk.

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200 Order for Production of Books.

(Entered in U. S. District Court October 5, 1923.)

Before Judge Youmans.

This day there came on for hearing the petition of the plaintiffs asking for an order, requiring the defendants to produce certain documents set out and described in said peti-

tions, said petitions being this day filed. On this day the defendants filed their responses to said petitions and the said matters involved in the said petitions were submitted to the court and by the court taken under advisement.

And now come the parties hereto, and the court being well and sufficiently advised in the premises, finds that the plaintiffs are entitled under Section 724 of the United States to have said motions sustained.

It is therefore by the court ordered, adjudged and considered that the defendant, International Organization United Mine Workers of America, be and it is hereby required, under the obligations and penalties imposed by law, to produce at the trial of this cause, the following documents if in its possession, custody or control: International Executive Board Minutes for all meetings of said Board held during the years 1912 to 1915 inclusive; and also each and every one of the printed and bound volumes of the United Mine Workers Journal, beginning with the year 1910, and including each year from and after that date down to and including the year 1916.

It is further ordered adjudged and considered by the court that the said defendant, District 21 be and it is hereby required under the obligations and penalties of the law to produce at the trial of this cause the minutes or reports of
201 the Southwestern Joint Convention or Conference proceedings for the years 1903 to 1914 inclusive, if in its possession, custody or control; and also the convention proceedings of District 21 of the United Mine Workers of America for the years 1903 to 1918 inclusive, except proceedings of Conventions of District 21 of May 18, 1914, September 21, 1915, and April 18, 1916; and also the minutes for all meetings of District 21 Executive Board, or Executive Committee meetings held during the years 1912 to 1916 inclusive; and also the reports of all presidents and vice presidents of District 21 for the years 1914 to 1916 inclusive.

The court reserves the right and power to decide and pass upon all questions as to the relevancy, competency, admissibility and materiality of each and every one of the documents above referred to at and during the progress of said trial, and when the same shall be offered in testimony.

The defendants save exceptions to the order of the court in requiring said defendants to produce each and every one of the documents above referred to.

202 (Renewal of objections of United Mine Workers of America to production of certain documents and papers at trial.)

Filed in U. S. District Court October 15, 1923.

The United Mine Workers of America, the International Organization, now renews its objections to the production of the books, papers and documents, heretofore ordered by the Court to be produced, and says that it should not be made to produce said books and documents for the following reasons:

1. Because the United States Supreme Court on appeal in this case has held that this defendant cannot be held re-[spondsible] for the destruction of plaintiffs' property, and under said opinion and ruling it is [oppresive] to require this defendant to further produce documents for the inspection of plaintiffs.

2. Because such order of production is a violation of the constitutional rights of the defendant, its officers and members under the Fourth and Fifth Amendments to the Federal Constitution.

3. Because there is no substantial showing that said documents contain material evidence in support of plaintiffs' cause of action, but that the same is plainly a fishing or roving expedition on the part of plaintiffs.

4. Because it does not appear that the plaintiffs have not possession of or access to said books and documents from other sources.

And now under protest said defendant makes profert to the Court of each and all of said documents ordered and directed by the Court to be produced by said defendant, to-wit: All
203 the Executive Board minutes of the International Executive Board of the United Mine Workers of America for the years 1912 to 1915, inclusive, and also of all the issues of the Mine Workers' Journal for the period of 1910 to 1916, inclusive.

UNITED MINE WORKERS OF AMERICA,
INTERNATIONAL ORGANIZATION.
By Henry Warrem
G. L. Grant,
Its Attorneys.

204 (Renewal of objections of District No. 21 of United Mine Workers of Americt to production of certain documents and papers at trial.)

Filed in U. S. District Court October 15, 1923.

District 21, of the United Mine Workers of America, now renews its objection to the production of the books, papers and documents, heretofore ordered by the Court to be produced at the trial of this cause, and says:

That it should not be made to produce said [bookss,] papers and documents for the following reasons:

1. Because said order of production is a violation of the constitutional rights of the defendant, its officers and members under the Fourth and Fifth Amendments of the Federal Constitution.

2. Because there is no [substancial] showing that said documents contain material evidence in support of plaintiffs' cause of action, but that the same is plainly a fishing or roving expedition on the part of the plaintiffs.

3. Because it does not appear that the plaintiffs have not possession of or access to said books and documents from other sources, and now under protest as aforesaid District 21 of the United Mine Workers of America makes profert to the Court of the following books, papers and documents, heretofore ordered to be produced by it at the trial of said cause:

I.

205 (a) Joint-conference proceedings of miners and operators of District 21, Arkansas and Indian Territory, August and September, 1903.

(b) Joint-conference proceedings of miners and operators of District 21, at Kansas City, April, 1908.

(c) Joint-conference proceedings of miners and operators of District 21, at Kansas City, February 21, 1910.

(d) Joint-conference proceedings of operators and miners of District 21, at Kansas City, February 23, 1910.

(e) Joint-conference proceedings of miners and operators of District 21, at Kansas City, April 12, 1910.

(f) Joint-conference proceedings of miners and operators of District 21, at Kansas City, June 8, 1914.

II.

Proceedings of conventions of District 21, as follows:

(a) Special convention of District 21, at Fort Smith, Arkansas, December, 1908.

(b) Convention of District 21, Fort Smith, Arkansas, May 26, 1908.

(c) Convention of District 21, Fort Smith, Arkansas, March 15, 1909.

(d) Convention of District 21, at McAlester, Oklahoma, November, 1910.

(e) Convention of District 21, McAlester, Oklahoma, February, 1912.

(f) Convention of District 21, Fort Smith, Arkansas, February, 1914.

(g) Convention of District 21, April 18, 1916, at Fort Smith, Arkansas.

(h) Special Convention of District 21, at Fort Smith,
206 Arkansas, May 18, 1914.

(i) Special Convention of District 21, McAlester, September 15, 1915.

(j) Convention proceedings of District 21, Fort Smith, Arkansas, beginning January 3, 1918, (2 volumes).

The defendant, District 21 of the United Mine Workers of America, reports to the Court that the reports of presidents and vice presidents of District 21 were made to the conventions of said district, and are preserved in the files of said district only in the minutes of said convention proceedings; that it [it] not in its possession, custody or control any other or further printed, written or typewritten minutes or reports of joint-conference proceedings or of convention proceedings, except those above enumerated, and which it has produced under order of the Court.

That with reference to the order of the Court for the minutes of meetings of said District 21 Eecutive Board or Executive Committee Meetings held during the years 1912 and 1916, inclusive, said defendant states to the Court that it is not in possession, custody or control of any minutes of the District Executive Board or of any Executive Committee of said district during said period.

That said defendant further states that it or its officers have not been in possession, custody or control of any such documents since the order was made herein, and that it cannot produce the same, and it submits in connection with this response and protest the affidavit of its President and Secretary-Treasurer, the said officers being the proper custodians of said books, documents and memorials.

DISTRICT 21, UNITED MINE WORKERS OF AMERICA,
By Henry Warrum
G. L. Grant
Its Attorneys.

207 State of Oklahoma,
County of Muskogee—ss.

Anton Koch, being duly sworn, says:

That he is Secretary-Treasurer of District 21, of the United Mine Workers of America; that he became such Secretary-Treasurer on April 1, 1923, and that by virtue of his office he has the custody, possession and control of the books, documents and papers belonging to said District organization; that upon receipt of the order of court, made October 5, 1923, for the production of books and documents of said district, he searched and under his direction caused an extensive and thorough search to be made of his files and of all the books, documents and papers in the office, custody, possession or control of said District and its officers, and that the books, documents and papers enumerated in the foregoing response are all the books, documents and papers in the custody, possession or control of said district called for in said order, and that he is not now nor did he have at the time the order was made nor did said District have in its files or custody any other files which it could produce under said order of the Court.

ANTON KOCH.

Subscribed and sworn to before me on this 13th day of October, 1923.

A. J. IMEL,
Notary Public.

My Commission Expires March 10, 1924.

10—6541

208 State of Oklahoma,
County of Muskogee—ss.

Andrew McGarry, being duly sworn, says:

That he is President of District 21, of the United Mine Workers of America; that he has read the foregoing response and the affidavit of Anton Koch, the Secretary-Treasurer of said District, submitted therewith.

That he assisted said secretary-treasurer in making a thorough and exhaustive search of the records, files and papers in the possession of said district, and of its officers, and that all the papers called for in the order that could be found have been sent to Fort Smith, and are correctly described in the foregoing response, and the affiant has no further knowledge of any other books, documents or papers which may be called for in said order.

ANDREW McGARRY

Subscribed and sworn to before me on this the 13th day of October, 1923.

(Seal) A. J. IMEL,
Notary Public.

My Commission Expires March 10, 1924.

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209 (Jury impaneled, trial, October 15, 1923.)

(Entered in U. S. District Court October 15, 1923.)

Before Judge Pollock

This day come the plaintiffs by James B. McDonough, Henry S. Drinker, and Edwin A. Lucas, their attorneys, and come the defendants by Henry Warrum and G. L. Grant, their attorneys, and the parties announcing ready for trial come the following persons as jurors for the trial of this cause, to-wit:

J. E. Chambers,	Noah Terry,	Lloyd Bland,
Lee Laird,	W. E. DeForrest,	John Bateman,
W. W. Austin,	Oliver P. Johnson,	M. L. Perkins,
J. P. Gibson,	James E. Wagner,	Isadore Moses,

twelve good and qualified electors of the Western District of Arkansas, Fort Smith Division, duly selected, impaneled and sworn. Having heard the statement of the case by counsel, and the evidence adduced, at the hour of adjournment the further consideration of this cause is postponed until tomor-

row morning ten o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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210 (Trial, October 16, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and comes the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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211 (Trial, October 17, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and comes the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow morning, ten o'clock and the jury permitted to separate under the admonition of the court until that hour.

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212 (Trial, October 18, 1923.)

Before Judge Pollock.

This day come the parties heretoby their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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213 (Trial, October 19, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow

morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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214 (Trial, October 20, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until Monday morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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215 (Trial, October 22, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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216 (Trial, October 23, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceds. Having heard the evidence adduced, at the hour of adjournment the furthere consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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217 (Trial, October 24, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceds. Having heard the evidence adduced, at the hour of adjournment the further

consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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218 Motion to Dismiss.

Filed in U. S. District Court, Oct. 25, 1923.

The defendants severally move the Court to dismiss this suit for the following reason:

Because it appears from the evidence submitted by the plaintiffs that this suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

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219 Motion for Directed Verdict.

Filed in U. S. District Court October 25, 1923.

The defendants severally move the Court to instruct the jury yesteto return a verdict in their favor and in favor of each of them, for the following reasons:

1. Because the evidence submitted by the plaintiffs is not sufficient to sustain a verdict in favor of the plaintiffs against said defendants, or either of them.

2. Because it appears from the plaintiff's own evidence that if there was any conspiracy, as alleged in plaintiff's complaint, that the plaintiffs were parties thereto, and participated therein, are in pari delicto and are not entitled to recover.

HENRY WARRUM,
G. L. GRANT,
Attorneys for Defendants.

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220 Order Overruling Defendants' Motion to Dismiss and Order Overruling Defendants' Motion for a Directed Verdict.

(Entered in U. S. District Court October 25, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on

yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

During the progress of the hearing on this date the plaintiffs concluded their evidence in chief, and thereupon the defendants filed a motion to dismiss, which motion was by the court overruled. And to the action of the court in overruling said motion the defendants duly excepted at the time.

Thereupon defendants filed a motion for a directed verdict, which motion was by the court overruled. And to the action of the court in overruling said motion, the defendants duly excepted at the time.

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221 (Trial, October 26, 1923.)

Before Judge Pollock.

This day come the parties hereto by their attorneys, and come the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds. Having heard the evidence adduced, at the hour of adjournment the further consideration of this cause was postponed until tomorrow morning, 10 o'clock, and the jury permitted to separate under the admonition of the court until that hour.

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222 Verdict and Judgment.

(Entered in U. S. District Court October 27, 1923.)

This day come the parties hereto by their attorneys, and comes the jury heretofore impaneled and sworn herein, as on yesterday, and the trial of this cause proceeds, and the evidence in the case on behalf of both plaintiffs and defendants is concluded.

At the conclusion of all of the evidence defendants renew their motion to dismiss, and also renew their motion for a directed verdict. On consideration of the motion for a directed verdict, the court being well and sufficiently advised in the premises, doth sustain the same, and thereupon by direction of the court, the jury returned from the box the following verdict, to-wit:

"We, the Jury, find the issues in favor of the defendants. J. E. Chambers, Foreman."

Whereupon, the jury is discharged from the further consideration of this case.

And now on the verdict of the jury here returned, it is by the court considered, ordered and adjudged that the plaintiffs take nothing by their suit herein, and that the defendants have and recover of and from the plaintiffs all costs by the defendants in this behalf laid out and expended, for which execution may issue.

To the action of the court in sustaining defendants' motion for a directed verdict, in so directing the verdict, and in entering the foregoing judgment, the plaintiffs separately and severally duly excepted at the time.

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223 Bill of Exceptions.

(Filed in U. S. District Court November 5, 1923.)

(Caption omitted.)

Be It Remembered that on the trial of this cause in this court, at the June, 1923, Term of said Court, the Honorable John C. Pollock, Judge, presiding by assignment, and on the 15th day of October, 1923, which was a day of the regular June Term of said court, the following proceedings were had, to-wit:

The plaintiffs and the defendants, to maintain the issues on their respective parts, introduced the evidence set out below. The said evidence was taken down in short hand and reduced to long hand, and said evidence is in words and figures as follows:

224 In the District Court of the United States, Western District of Arkansas, Ft. Smith Division.

Coronado Coal Company, C. H. Finley and H. P. Hilliard, receivers, et al., Plaintiffs.

vs.

United Mine Workers of America, et al., Defendants

Be It Remembered, that on the 15th day of October, in the year of Our Lord 1923, at ten o'clock A. M., the above entitled cause came on for hearing before the Hon. John C. Pollock, Judge, and a Jury duly empaneled, the plaintiffs appearing by their attorneys, James B. McDonough, Henry S. Drinker, Jr., Edwin A. Lucas and G. C. Hardin; and the defendants appearing by their attorneys, Henry Warrum, Earl C. Hauck, and G. L. Grant.

Thereupon opening statements were made to the jury by counsel for the respective parties, as follows:

225 Mr. Drinker: If your Honor please: Gentlemen of the jury, for the benefit of those of you who have not indulged in litigation before, it is my function now to tell you in a way what this case is about, so as to help you to understand the evidence a little better as it comes in; but you must remember that you are not to decide this case on what I say; I am the lawyer, and I am trying to help you and give you an outline so you will be able to see how each piece of testimony fits in here. But you must remember not to go by what I say, or the other lawyers, but by the evidence which you hear. I am here to try to help you, so you will see what we are driving at, and the theory of the case, and I will try to outline to you, as briefly as I can, although it is long and you will have to be patient, but I hope you will follow my statement, and when the evidence comes in, see if we make good, because we don't want to promise anything we can not deliver.

I will tell you what we expect the witnesses to testify to, and I will give it to you in more logical sequence than the witnesses will, because when we have a lot of witnesses we have to bring in one of them at a time, and the witnesses will skip around, back and forth, and I will give it to you in a line, so when the witnesses come, you can fit their evidence into the proper place in the story. You will see then if we prove what we say we are expecting to prove.

Now this case is a suit for damage under what is called the Anti-Trust Act, under the Sherman Act, which is an Act of Congress, which says if people get together and
226 conspire to destroy the property or business of anybody, or any company, or any lot of people, if those people have a business, and a lot of other people get together and conspire, put their heads together in such a way as to [injury] or hurt those people in that business,—if that business consists of goods or whatever it is, coal or cotton or whatever it is, goes from one state to another, and if these conspirators get together to prevent the people who are running the business from sending their merchandise or coal from one state to another, that is a special offense that Congress has a special reason to protect, and they give damages. Now the United States Government has charge of affairs between the different states, and the state has charge within its own state, so that the United States laws cover all matters where it is between one state and another state, and that is the reason that this law only covers where a conspiracy is

for the purpose and has the effect of interfering with the free flow of commerce from one state to another. The big government at Washington has therefore seen to it that people be free to send their goods from one state to another, and that commerce is free between the different states, and for that reason they passed this law, and say where people get together and conspire to hurt a business which is interstate, going from one state to another, that they have to pay damages under the Act of Congress.

Now we contend that the United Mine Workers of America are guilty of a conspiracy of that kind, to destroy our business, for the purpose and with the effect, as provided
227 by this law of the United States Congress, and we are asking you to award us the damages that we suffered by reason of that conspiracy.

Now, with that preliminary statement as to what the thing is about, I will try to tell you what the conspiracy was. First, I will introduce the plaintiffs. The plaintiffs are the coal companies that are bringing this suit. I will give you a picture of them, and then of the defendants, as they do in the movies, with the actors, and then I will go ahead with the drama that was enacted down in Prairie Creek in 1914, and tell you what happened.

Now, when you hear us talk about the plaintiffs, you know we mean these coal companies; the coal companies are the plaintiffs. They had their beginning back in 1903. Prior to that time we will show you how in 1898 Mr. Bache, and you will hear his name mentioned a lot of times, and Mr. Denman, his partner, came out to Oklahoma and developed some coal properties there. They were young men, and built up the business, and then sold it out and came over to Arkansas, and here acquired properties down in the Hartford Valley, between Hartford and Midland and Huntington, and they began to acquire coal properties and develop coal mines, and from the small beginning they built that business up until they had five or six—six coal mines down there in the Hartford Valley in Arkansas, all running and well equipped, with several hundred men employed, and doing a large business in which they invested over half a million dollars. You should wait until you hear the evidence as to how big they
228 were, and of what importance they were, but to show you what a considerable business they built up, beginning as young men, I have made this statement. We will show you that from that beginning, by 1914 they had built up this large business and were shipping a large amount of

coal, three-fourths of it going to other states than Arkansas They shipped way up to Minneapolis and St. Paul, and into Kansas and Texas, and down into Lousiana, and all around, as you would know a coal business would do. They had regular customers there, people that bought their coal. Now, that is the plaintiffs.

Now, introducing the defendants, and then I will show what happened between the two of them. The United Mine Workers of America is a labor organization, the largest labor organization in the world, I think. It had, at the time of this trouble in 1914, from the statement of the officers, some four or five hundred thousand members, and it had members in Arkansas, and all over the country. It began somewhere back in 1890, and I want you to understand that our position is that we are not against labor organizations as such, or [in] against labor in favor of capital, or anything like that, but all we want is a square deal. I think you will see from the history of this case that the United Mine Workers of America, when it started out, was a good thing, was a beneficent organization, and a good organization, and there is no reason in the world why laboring men, mine workers or anybody else, should not get together and form labor unions, and organizations, and protect their rights and their property, and there is no reason in the world why they should not, and I have no doubt there was need for them to be protected; be-
229 cause 20 or 30 years ago perhaps they did not get a square real, perhaps the corporations had the high hand and ran things with a high hand, and I think that you gentlemen will see before we get through with this trial—not because I say it, but because we expect to prove it, and I might say that in front of every sentence I say I might say "We expect to prove", but I will not do it, it takes too long—but wherever any lot of people get too much power, they always abuse it. That is the trouble, you let people get to running things with a high hand, with no responsibility, and nobody to say no to them, there is trouble, and with a corporation there would be trouble, or in any other organization; and our contention is these labor unions got so much power and ran things with such a high hand that they overreached themselves, and thought nothing could ever happen to them, and what they did was to burn up our mines, as we will show you, destroy them with dynamite, they killed some of our boys and left us a blank, wiped out. That is what we are claiming damages for.

I am getting too quick. Our contention is not that labor organizations are bad, and coal companies are good. There

are bad lawyers and good lawyers, there are bad farmers and good farmers, there are bad preachers—not so many of them, —and good preachers; but in this case you will see who was doing right and who was doing wrong.

The United Mine Workers began in a small way back in the nineties, and they grew until in 1914 they had this enormous membership, and the difference between the United Mine Workers and some of the labor unions is that they
230 have such an enormous ramification; they are all over the country; they have membership in Pennsylvania, in all—in fact, they have in practically all of the coal states, where coal is mined they have or have had a representative, or trying to get one. So their constitution provides that they were going to try to get in the organization every man who worked in the coal mines, and there is no reason in the world why they should not, if they did it properly and without unduly interfering with other people. There is no reason why they should not get every man, if they can persuade him to come in. But the difference between the United Mine Workers and some small, little labor union, is that they have this big organization that was built up in that way. They have in this organization what is called local unions, and the local union is the little clique of men that is just at one particular mine, and that local has a number, 163, or whatever it is, and the men in that local work in a particular mine. Then they have 30 districts, I think. They are divided into states, and the local unions each belong to their own district; for instance, District 21, where our mines were, comprised Arkansas, Indian Territory, now Oklahoma, and Texas. District 14 is Kansas; District 25 is Missouri, and District 15 is Colorado, and so forth. And then all of the United Mine Workers belong to the International Union. The International is divided into districts, and the districts are divided into locals. The members belong to the big association; the local belongs to the big association, but the members and the locals also belong to their proper dis-
231 tricts, and the members to their proper local. You see how it is divided. The big association over them, and then the district, and the local making up the district, and the miners belonging to the local, also belong to the whole show. Now the organization of the United Mine Workers of America is so constituted that the international officers—we call it International because they have representatives in Nova Scotia, and also I think in Mexico, but they don't belong in Germany or any foreign country outside of North America, but what I mean by International is the big

union, that everyone of them belongs to. The international officers by their fundamental law and constitution, which I think will be put in evidence, have great power. They are governed by a president, and the president at the time of this trouble was John P. White. They have a president, vice-president and secretary-treasurer, and those officers are the international officers. Then there is an executive board, which comprises the representatives of each district. If there were 30 districts there would be 30 International Executive Board Members. They are the officers for the purpose of this business, that represent the International union. They have tremendous power. The International President has power to discharge any member, all over the country, and the International Executive Board has the power to suspend and wipe out any local union, for reasons given, and if the local union or a member goes against the laws or rules of the International organization, the international officers can wipe them out. They can suspend and wipe out a local union. Not only that, but they can wipe out a district.
232 They can take all of this Arkansas, Oklahoma and Texas membership, and wipe it out, and take all their funds, and money that they have, and turn it into the central treasury at Indianapolis. You will see that they have tremendous power. The district officers have less power, but they are allowed a certain discretion, as to the management of the affairs in their own district, and they take care of the local troubles that are down here, and the men that are concerned in them, that are not big enough for the international officers. But our position is, wherever there is a difficulty or controversy that involves more than one state, that the international officers are the ones that do and should step in and manage it.

There is the picture of the two parties, and which is the hero or the villian you can find out from the evidence.

Now we come to the relations between them. Now as I told you in the beginning, we have got to show, in order to win our suit, that this law of commerce, that this conspiracy which I will describe to you, was a conspiracy which was made, and which the necessary effect of was to prevent the shipping of our coal from one state to another freely, and as I told you, 75 per cent of our coal was shipped to other states, and we had customers in other states, so if our plant was destroyed or burned down, it necessarily would prevent that shipment, and the free flow of commerce.

Then what object could the United Mine Workers of America, whose men were working in our mines, have to destroy our plant? It is our position that they did, that they attacked us with a thousand or fifteen hundred men, and burned
233 up the property, drove our men off with high powered rifles and shot guns, killed two of them, burned the whole place down and wiped us out absolutely. Now why should a labor union want to do that? That is the question you will have to decide, if you find that a labor union did that, and you watch when this testimony is going in, you watch to see what could be the motive for miners to destroy their own jobs. That is what you want to think about. Here is a lot of these men that were working in our mines, and why should they want to burn down the place where they work and destroy those mines and their livelihood and put themselves out of a job, so they would have to find a job somewhere else? Now, here is why we contend that they did that. This was a big centralized organization. It does not just—it was run by a big head from central headquarters, and they ran their business to increase their power and membership, and whether the evidence will show that politics had anything to do with it I don't know, you can make up your mind on that; but be that as it may, our position is that here was a great big organization with officers and membership all over the United States, and that one district was affected by anything, seriously, that happened in another. The United Mine Workers of America started its relations with the operators, I think, in 1898. That is when they got in considerable power. Now in the coal business the relationship between the miners and the operators, there are three classes or ways they work, and I want you to bear these words in mind, because you will hear a lot about it. There is what is called the closed shop. That means the business, the closed shop means, that the admission to work for the company that works on the
234 closed shop is denied to any man unless he is a member of the United Mine Workers of America. The closed shop is where only members of this organization are allowed to work, and that is by agreement between the coal companies and the miners' officials. They make an agreement with the union officials, they have gotten the coal companies to agree to employ only union labor. That is, that nobody can work in that coal mine unless he is a member of the United Mine Workers of America, except some kind of work such as foreman, or boss or pit boss, and some people that are called company men, but the miners and laborers have to be members of the United Mine Workers of Amer-

ica or they can not go in there, and the union rules forbid a miner, as we will show you, to work in a mine where there is anybody but union miners. If there is a man in there that is not a member of the United Mine Workers of America the other fellows will not work with him. That is what is called the closed shop, where only members of this organization are allowed to work.

Now that closed shop has been adopted by a great many operators, and by most of them, I will say, in the United States, in what is called the Central Competitive Field. You will hear a lot of witnesses speak of the Central Competitive Field, and that is Ohio, part of Pennsylvania, Illinois and Indiana. They have had the closed shop since 1898, and in Iowa, Kansas, Missouri, and a number of other places they have the closed shop, and they have had it at times here in Arkansas, both Indian Territory, now Oklahoma, and Texas,
and did have in 1914. They had it here from 1903 to
235 1914, they ran on a closed shop, and the reason that
we got burned up here was because we tried to run what we called an open shop, where we employed any good man who wanted to work for us, no matter whether he was a member of the union or not. We employed United Mine Workers of America or anybody else, and that is what we wanted to do, and our position is that they burned us down because we wanted to run what is called an open shop. Now, it goes further than that. I have to explain to you, and will in a minute, why it was that they objected to us running open shop, but before I do that I will tell you what the open shop was.

The open shop is—maybe I ought to first say what is called a non-union operation. There is some people that speak of non-union and open shop as meaning the same thing, and when you hear the word non-union, you will have to see whether the man means a place that they don't employ union men, or whether it is a non-union place where there are no United Mine Workers of America employed. In the non-union shop, the man has to sign a contract not to belong to a union before they will hire him. That is the case in some places in the east, but it was not the case at our place. Our case is the third kind, an open shop where we can employ union or non-union men if they were good workmen. Now why is it—I started to explain—why is it that an organization whose men have their jobs in a mine would want to destroy the mine?

You can see why, perhaps, they would want to put the people out that they did not like to have in there, where
236 the company says they will not employ any union men, and just people that are not members of the union, that that might make them mad at the people that came in there to take their jobs, but why would they, and this is the question you will have to consider, why would it be that the union men would want to attack a place where they could work if they wanted to, by just having to work alongside of some fellow that did not happen to belong to their club, and why they would want to run those fellows out of there, but why would they want to burn and wholly destroy it so they would have no place to work? Now, we will show to you what the reason was, according to our evidence. The union got signed up, they made contracts with operators, and by the operators I mean the coal companies, and you will hear the word operators a lot of times, and there are a lot of them, these terms, that are familiar to us, that you might not understand. The union made a contract for the closed shop where none but union men would be employed, with the operators, the coal companies, in Pennsylvania, Ohio, Illinois and Indiana, in 1898. With that beginning they spread, and signed up with operators in Iowa and Missouri and Kansas, and in 1903, they came down here and got the operators to agree to employ none but union men. Now, we will not go into the details as to how the union brought that about in all these places, but that is how it happened. Now, it was found very soon after the unions got started that these operators had established the closed shop in the Central field, that is Pennsylvania, Illinois, Indiana and Ohio, and it was very soon found out that an operator, or coal company,
237 could run its mine a good deal cheaper by the open shop method, or by the non-union method, than they could be the closed shop method. And the reason for that we will explain to you, and will have witnesses that will tell you why it cost more money to mine coal under the closed shop than it does under the open shop, but the principal reason was this, when they started in 1898, the main difference between one and the other was that the companies paid the union miners higher wages, and made them work less hours in the closed shop than in the open shop. That is one side of it. There is a good deal to be said in favor of the unions, if they furnished, as their theory was in the beginning,—their theory was that they would furnish better workmen than people that come from here, there and everywhere, they would furnish better workmen and they would work harder for eight

hours, than the other fellow did for ten, and would do more work for six dollars a day than the other fellow for five dollars, and that they could afford to employ the unions, and they told the operators, you employ us and you will get better results. You can appreciate that they could afford to pay a man five dollars a day if he would do good work, than to pay a man two dollars and a half a day that would only do a dollar and a half's worth of work. That was a very good theory. Originally it perhaps was no more expensive to employ union men than non-union men, for all I know, but as they went on, and as the United Mine Workers of America got what was practically a monopoly of labor, when they had these four states and nobody could work in the mines but the United Mine Workers of America, then the thing happened, and
238 the same thing will happen to everybody when he has a cinch. Our contention is that the men began to lay down on the job and would not do the work, and furthermore, the unions began to put in a whole lot of arbitrary conditions. Now I don't know whether the growth of those conditions,—exactly why it was, you will be able to judge from the testimony, whether the miners really believed that some of these things were good, or whether they were misinformed as to them, or whether perhaps some national official wanted to make a name for himself so he could be elected to some office, or whether he did not just make a fuss all the time with the coal companies in order to tell his people at home, see what I am doing for you; but those things you can consider when you are considering the testimony.

But there is no doubt about it that they did happen, and we believe our testimony will convince you that it happened, that the union kept sticking in the contract, year after year, all sorts of conditions which we really don't believe did the union any good, but the company a good deal of harm, and made it more expensive to mine their coal. So, after 10 or 12 years of trouble with closed shops, it was not the wages that we paid, or the hours that were worked, but the idea was there were so many conditions in there that the unions demanded us to comply with that we could not do anything. For instance, if we had a man who was lazy, and was no good, and insubordinate, if we tried to fire him, the union would say no, you cannot fire him; and if we did they would go
239 out on strike. We will show you that those things happened. They would not allow a man to work more than eight hours, even if he wanted to. If there was a fellow that got his coal out there, instead of allowing him to go down after four o'clock and blow some coal out with dynamite so

it would be ready for the other fellow to shovel it up the next day, he was not allowed to do that. If it was an ambitious fellow that wanted to work a little harder, he was not allowed to do that work.

240 The rule also was that the men were not allowed to do but one kind of work. For instance, they had what they call the short fires, and only certain people were allowed to do that work, men who blew the coal up with dynamite. Those men would only have to work about an hour or two a day. Instead of their working eight hours they would only work two hours. That imposed a burden on them that was very difficult for them to bear. You know what would happen in your business, you farmers, if one fellow only cultivated apple trees, if one fellow only cultivated beans, or one fellow would do this, that or the other. You would have your farms full of laborers and would only get about one third of your work done. That is the way that worked out.

So they had all these conditions and rules and regulations, so that the operators could not run their mines. What was the effect of that? They, shortly after that closed shop was established up here in the central field, the Union Operators, the men working in the closed shop, they found they could not sell their coal against the fellows who were running the open shop, because down in West Virginia, right near the Pennsylvania field,—this is just to illustrate it and bring it down to you at home. When the Union Operators found these fellows running under the open shop, could mine their coal for 50 cents a ton less expense, and could sell for 40 cents less and still make 10 cents, they were taking their business away from them. They told the United Mine Workers, "See here, we can't run the Union Closed Shop with you fellows unless you will Unionize West Virginia and bring their costs up even with ours. And so the Union fellows started in to
241 unionize the other field, to protect the Union operators, and I am going to tell you how it worked out after that.

Now, we will bring it down here. When they got Arkansas and Oklahoma and Texas organized, when they got the operators to agree to the closed shop, so that nobody could work in the mines but members of the United Mine Workers, they found there were some mines in Colorado that were working open shop, and the Colorado fellows were shipping their coal into the markets of Kansas and Oklahoma and Arkansas at considerably less cost than the Union operators of those states

were able to mine their coal. They would mine the coal in Colorado and ship it right down here and take the market away from them. We have a map that will be shown to you, that was shown to the United Mine Workers right up in Kansas City at a meeting in 1910, showing the markets were a great big part of the United States in 1903, but it was gradually contracted until it was very small, resulting from the inroads of the Non-Union coal mines in Colorado and Alabama. The Union had not been able to organize the mines in Alabama, and neither had they in what is called the lignite fields of Texas. There were some parts of Texas that were not organized.

That Colorado and Texas coal they were able to mine cheaper on account of the open shop condition, and that squeezed the operators in these states and restricted market. When the Colorado people had to ship too far, they had to pay so much freight that they could not compete with the Arkansas fellows.

You know how it is. You are farming in a community and your market is right around you, and it is situated so that nobody can take it away from you, except your next
242 door neighbor. If he can manage his business cheaper than you can manage your business, he can undersell you, but a fellow who is a long distance away, even if he can work 50 cents cheaper than you can, he cannot ship his goods in and pay the high freight rate.

So when these open shop or Non-Union companies got to coming in here, the United Mine Workers found that out, and began to realize that it would cripple them in this way—that if the open shop coal kept coming in and taking away the market of the Union operators, the Union operators are not going to be able to operate their mines on a Union basis, as they had been. In the coal business a whole lot depends on the amount of coal you can mine. There are certain costs, like salaries of officers and such as that, that go whether you mine one or one thousand tons, but if you have a certain cost that goes on in that way, and you can mine a thousand tons that will be 10 cents per ton; if you can mine ten thousand tons, it will be one cent per ton. So the more coal you can mine the cheaper it will be for each ton.

Now, when the production of a coal mine is curtailed so it will only run a few tons of coal, that cost goes up higher, very much higher. So there is another reason why the Non-Union or open shop operators were able to take away the markets

from the Union operators and restrict their output, by the further increase of the cost and the disparity between the two.

Here is the situation they had in 1914. The Union was still firm in this territory, but all around it there were Non Union mines, open shop mines, and they were mining away below the cost of the others, and were squeezing them to-
243 gether, and the operators were complaining bitterly to the miners, "If you don't protect us by unionizing the other mines and bringing their coal up even with ours, we will have to go out of business."

The United Mine Workers knew that perfectly well, that if they hoped to continue to operate and gain strength and increase their membership, they were necessarily compelled to protect these operators from that competition; otherwise these operators in Colorado and other states would take their market away from them entirely. Of course, as I said, these mines from a long distance could not ship in here so well and pay their freight, but suppose a big mine started open shop right in the middle of Arkansas, with no freight rate, a next door neighbor, starting a method of mining that reduced their costs 50 or 75 or 25 cents a ton, whichever it may be. Suppose they were to mine their coal for that much less, what would happen? Necessarily he would take the market away and undersell these other fellows and his competitors would have to go out of business, or adopt the same method of mining the other fellow was operating under. There is your motive.

So the Union knew perfectly well, and their officers knew that they could not afford to allow the operators to start up in Arkansas and run under the open shop method, because they knew if that was done it meant a cheaper cost per ton of producing coal, and they knew the Union operators could not survive, because the necessary result would have been that the open shop fellows would undersell their Union competitors and take their markets away from them, and the Union
244 fellows would say "If you can't protect us by making their coal equal to ours, we will have to mine the same way he does." That is why we say the Union destroyed our mines.

We had been so harrassed by that condition and the various rules and conditions that they kept imposing upon us, that it made it very difficult to operate. It was only a small amount, only a few cents a ton, but it was enough for the large tonnage we had that we realized that we had to reduce that

cost in some way, or we couild not run our mine. So we determined that we would try a new method.

We will show you that the Union had strike after strike against us, without any excuse, although their contract provided there should be no strikes, but any difficulty should be settled by arbitration, but whenever they felt they had a grievance they would lay the mines idle, and we could not run our mine the way a business concern ought to be run.

So after they continued to impose these burdensome conditions upon us, and we were confronted with this condition of competition, we got tired and said we couldn't stand any longer, and we were going to run our mines the way we wanted them run, and we were going to try to run them open shop. When we said that, we tried to run them open shop, and they wiped us out, destroyed the very means of their own livelihood.

Our position is, the reason that they did that was, they knew if they allowed us to run open shop, we could ship our coal out and take the market away from the Central Coal
245 & Coke Company, and the Central would have to run open shop or go bankrupt, because they could not sell in competition with us. If two mines started the open shop, then it meant others would have to follow suit in order to meet the competition, and the Union knew if they allowed us to survive and to run our mines the way we wanted to it would only be a question of time before they would be wiped out, and there wouldn't be any Union here. I don't mean we would have hurt them or interferred with them in any way, but as a Union they would not have had a closed [hop] in this district, and the people who ran the Union would not have been able to say what anybody should do, and it would have resulted in their going out of business. If they hadn't been able to enforce the closed shop, they would have lost members [—] all of the country. That explains to you why these people should destroy the very things that were making their living. They didn't do it for any reason except that the other Unions all around had to be protected, and they were working together, working like an army does where a regiment will be sent to certain death. Why would those men want to go out to be killed? Why, to protect the other part of the army. It is the big idea, the working in one company, and these fellows are willing to destroy the means of earning their livelihood, under orders of the big people higher up in order to protect

miners [that] other points, figuring they could go out and get employment somewhere else.

In 1910, as we will show you, Mr. Bache, who is the [present] of this company, determined he would try to run his mine open shop, and he announced that in March and told everybody that he would be glad to have all the men that had been working there to stay there, "but there are some other men that
246 I think are good workmen, and we are going to have them work here." I don't think there will be a word of evidence he discharged a man on account of his being a Union man. He said he was glad to have them all work there who cared to work, but he said, "If you want to work here, you [most] not mind working besides a man who is not a member of the Union." If he is a good man he will be employed. We will give everybody a square deal."

He received a visit from Mr. Stewart, president of District 21, and he told Mr. Stewart that he could not go on any more that way, and was going to run open shop, and they knew it. So on the 4th of April he started his mine open shop. In 1910 he had had a little experience. He tried to run open shop for a couple of days in the summer, and twelve or fifteen hundred Union men came down there and intimidated his men and ran them off the place, and bragged about it in their newspaper. We will show you the article about it. It scared the workmen so they were afraid to work, and he had to abandon that and he signed up with the Union. But he knew from that, and also knew from lots of other experiences of friends in other places, that if he tried to run open shop he was going to have trouble, and have destruction of the property and injury to his men, and perhaps destruction of their lives.

Knowing all those things, he tried to get men to work for him, and they said they would not work unless he would protect them. So he hired four or five men to protect those fellows, and armed them with four or five rifles, and put them around his mine, and took away all inflammable material so it would be hard to burn his property down. He expected
247 there was going to be trouble, and we will show that he had reason to expect it. He fixed everything as near as he could so they could not do any more harm than was necessary, and then he started the mine.

The first day they had what they claimed was a parade, or some of them called it a picnic. You will see what kind it was from the testimony. They had people coming from Midland

and Hartford and Huntington, three towns in the valley there, 100 per cent. Union, practically nobody but members of the Union and their families and people who lived off of them, store-keepers who sell goods to them, and so forth, living in those towns. There are big mines there, and all the people in those towns work in the mines, and they are all either members of the Union or sympathizers with them.

They came together in the Union Hall at Prairie Creek, and they had some speeches, and after that they went down and had a kind of a parade, and they went on down and attacked these men, these guards. The guards did not offer any resistance, but they were attacked brutally and without any excuse, by a number of the Union men, and we will identify them. They were beaten into insensibility, four of them, and the others were run out. They finally ran all those men out and hoisted a flag on the tipple and said, "This is a Union man's country," and they injured the pumps so that the mines were filled with water. There is water leaking into coal mines all the time, which has to be pumped out, and the mines kept as free from water as possible, and all the men were
248 taken away from the mines. They came to Ft. Smith, and the mines filled up with water so no coal could be shipped. The Union had produced a result under which we could not operate our mines in competition with the mines operated under the open shop method, and then the Union would not allow us to run without interference, and destruction of our property, and the lives of our men.

These things went along. In two or three months an application was made to the United States judge, by which we were not able to get him to hear the case because of technicalities, but there were some United States marshals went down there to protect the property, and the Court issued an injunction, so that anybody who [interferred] with our people should be put in jail. He sent down the United States marshal to protect us, so that we did get some protection, and after two or three weeks, we got a bunch of men to go down there, Non-Union men. We were glad to have Union men, but they wouldn't work with us. They started in to pump the water out. The pumps that ordinarily run were flooded, so that they had to make big boxes to hoist the water up until we could get down to the pumps. The Union men didn't care how much money we spent pumping the water out; all they wanted was to keep the coal from coming out. They would allow us to bankrupt ourselves pumping water out of the mines, so long as we weren't getting any coal out of them.

That was all they were interested in. They also [interferred] with our getting in more men. They would meet men at the trains and throw rocks at them and call them vile names—I will not say "vile." I will take that back. I don't want to use any adjectives, but I will say they would make
249 it so unpleasant for these fellows that it was hard to get them, and they kept bothering us all the time, until finally at the end of June we got the water out and were ready to ship coal. We had had some protection from the United States marshal, but the [Washing] authorities found out there was some law that the United States Court did not have authority to send Marshals down to protect this property, and that we would have to rely on the local authorities. They were absolutely against us. We will show there was one constable down there, who was chairman of the local Union, and during that period when some of our boys were attacked by those people, he would not raise his hand, but if some of our fellows would simply raise their hand to wipe the sweat from [—] brow they would be arrested. The Union controlled those local peace officers, every one of them, so that we could not get any protection from them. When the United States marshals were taken away about the 15th of July, we will show you the operations of the Union men, and we want you to watch this testimony. They were managed and controlled by very clever people, but they were not clever enough to hide the eternal truth, and we think we got it. Here is what they did:

They started to spread rumors around that our four or five guards and workmen, who were only too anxious to be let alone, who were only too anxious to be safe from attack and to have their lives spared, that they were going out into the Union towns where there were twenty-five hundred miners and insulting people and terrorizing the community, and after they got them pretty fairly spread over the community they got together under leadership on July 17th, and we will show you that the Union men were shooting at these guards or
250 these "scabs", as they called us. After having done all this, they surrounded our mines with anywhere from a thousand to fifteen hundred men, coming from a distance, armed with rifles and shot guns and pistols and everything else, and attacked our men in daylight and had a battle there. There were forty or fifty of our men there, and they did the best they could, but when things got to hot for them they all fled, and the Union men came up and captured a lot of our fellows. Some of them were from Tennessee, and they were very nice to them. They treated them kindly and sent them back to Tennessee. They saw the reason was that they were

not enemies to these Non-Union men, and that was why they were so decent to those fellows. But when they got them out, and they captured four or five men that had been around there, men who knew them, men who knew who was who, they were—two of them were shot down in cold blood, murdered. The Union men took those fellows to a log cabin, and the first two of those fellows were shot right down dead and then somebody else pursuaded this fellow not to shoot any more. There was a peace officer there who saw the whole thing. Whether he was fixed up in it or not, we do not know, but we do know that he never made a move to arrest the man that shot them. They put the bodies in that cabin and burned them up there, and nothing was done with any of them.

Then they proceeded to burn the whole place up. They got some dynamite and blew up the tipples and shaft so the mine all filled up and couldn't be operated, and destroyed hundreds thousands of dollars worth of property. It was wiped out and burned up. They ran our employees away so we couldn't do anything.

251 Then we finally quit. We had nothing to go with. We had money we had been borrowing to run the mines, and we couldn't go on, and all we had left was what you gentlemen will say we are entitled to recover from these people. We tried to operate our [mine] as we thought they should be operated, and they burned us out, destroyed our property and ran our men away and that is what we had left. We have left American justice which we are going to demand at your hands. You will see from the testimony how much the value was. You will have not doubt that there was tremendously valuable property there. You will see how these coal mines were running and the amount they had invested. You will see how if we had been allowed to [operated] we would have done a whole lot of good to the people of Arkansas. We would have given employment to good honest people. We would have shipped our product out over the state and into surrounding states, if we had been allowed to protect our business in a law-abiding way, but these people with their arbitrary power, they thought, as others have, that they were God and could run the whole earth and nothing was going to stop them, and they abused that power.

We are here to ask you to give us two things—justice, to be put back in the position we were in, and bearing in mind the second thing, as to what it means in this country to have [just] done, to what it means when every man is allowed to manage his business in an honest way, and that his fellow

citizens will not allow it to be taken from him or destroyed. We are going to ask you to give us a verdict that will put us back where we were, if we had been allowed to manage
252 our business in the way any free American citizen is supposed to manage his business.

Mr. McDonough reminds me to say that our proof will show the property and business was damaged with a fair value of $750,000.00. That was in 1914. We have been out of that money ever since, and it will be for you to say how much we were entitled to for being out of it for ten years.

The Court: Proceed with the statement for the defense.

Mr. Warrum: If the Court please, and Gentlemen of the Jury: something has been said by Mr. Drinker for the plaintiffs as to why this case is in the Federal Court, and the nature of the complaint they have filed and the statute under which they expect to recover. Now, ordinarily, the right of action of the man whose property is destroyed against those who brought about the destruction of his property, would be in the state court in the form of an action for the actual damages suffered by the owner of the property. This action, however, brought by these plaintiffs in the Federal Court, is upon one theory, and can be sustained here under the jurisdiction of this Court only upon that theory, and that is that the destruction of this property occurred by reason of and in order to carry out a conspiracy on the part of the defendants, which conspiracy was in [restraint] of interstate trade and commerce. They have the right to elect into which Court they shall go with this provision—that if they come into the Federal Court and invoke its jurisdiction they can only ask the Jury to return a verdict and ask the Court to render a judgment upon that verdict under the circumstances in this case, if they establish that the destruction of this property was in pursu-
253 ance of a conspiracy to restrain interstate trade and commerce in coal. If they bring their suit in the state court, they can show that the defendants are liable and recover the actual damages, and in this court, as the complaint sets out, if they can sustain their cause of action in this court, they will get a verdict for their actual damages from the Jury which is trebled under the statute by the Court rendering the judgment. Now, this fact alone may explain why these gentlemen have brought his suit under what they call the Sherman Trust Law or the Federal Anti-Trust Act.

I wish to be brief, because this case will develop as evidence is introduced and the Court rules thereon, but there are

one or two propositions that I want to call your attention to, because of the statement of Mr. Drinker.

He has said something about the organization of the United Mine Workers of America and has lauded the efforts by which this organization was first formed and its activities in the first two years of the organization. Now, it is a labor organization and a good many of you jurors may not have come in contact with a labor organization, or your lines of life may not have been in localities where you should either see the workings of a labor organization or appreciate the reasons for its existence.

Just in connection with what Brother Drinker said, I want to call your attention to an obvious proposition; that whereas, that laborer that a farmer employs is labor that he lives with, walks with, eats with, practically sleeps with, that he is in intimate personal contact with, has an intimate personal relationship with, a form of labor that he is in constant
254 contact and touch with, and which he, in the matter of wages and working hours and conditions, and such matters as that, can always exercise his own human and just control and judgment; whereas in mines or in large factories the labor is entirely disassociated from the wealthy employer, from the men who control the factory and the mines, so that it has seemed that in the economic development of this country the only contract that labor has with its employer is in the matter of wage scales and working conditions and the things that surround their employment, to give them some leisure in their lives, to enable them to earn an American standard of living, to enable them to educate their children, is the Labor Union or the labor organization. Why? Simply because it enables them collectively to bargain with a mass of capital that is collectively organized on the other side. That is the whole excuse and justification for labor organizations in large mills and mines and factories.

I don't think it is pertinent in this case, as to the rules and methods that the United Mine Workers or any other labor organization may adopt with reference to protecting itself, protecting the integrity of the labor organization, protecting itself against weaknesses that will develop in relations with their employers, but certainly collective bargaining is one of the things upon which they must insist.

The only thing that collective bargaining can be based on is the right to say that they want a certain wage scale, and [a] certain working conditions, hours of labor, or whatever it

may be that will not be disturbed by the employment of Non-Union labor alongside of them. The mine workers are
255 men who work under the surface of the earth, just as you live and work on top. There are probably six hundred thousand in the United States, and five hundred thousand of them have seen fit to join this organization. That ought to speak something for it.

Now, this organization, to use an analogy that may illustrate it some, is a good deal like the Democratic party or the Republican party. It is a national organization, with a national committee, it has a state organization, and it has its county or local organizations, those being the local Unions at each mine. They have seen fit, although they are not incorporated, to sue the United Mine Workers, the international organization, to sue District 21, which is an unincorporated association that functions in Texas, Arkansas and Oklahoma, and to sue the local Unions. But in doing that they must show that there is some liability upon the part of these different defendants, the international organization, the district organization and the [local] that were sued.

The evidence in this case will show by the constitution of the International organization, which has been passed upon by the highest court in this land, and by the constitution of District 21, that it was provided between these organizations that local strikes might be called by the district, for which the international should have no responsibility and over which they should have no jurisdiction. Now, the evidence in this case will show you, and Mr. Drinker has not dwelt upon this point in outlining the facts as they expect to present them, but the evidence will show that the international organization had nothing to do with this strike at Prairie Creek; that it was a local strike brought about by the
256 action of Mr. Bache in locking out his employees three months before the wage scale under which they were working in the Union mines had expired; that the district financed this strike and had charge of it and in the international organization had nothing to do with it, either in ordering it, participating in it, or ratifying it, and these plaintiffs have no right to hold this organization responsible any more than they would have any complaint filed against a committee of the Democratic party in Arkansas or the Republican party, for something they had done, and endeavor to hold the national committee responsible.

Now, as to the district, it did have jurisdiction of this strike. The district did take part in it. Let us survey the

fact for a moment, which we believe will be demonstrated upon the witness stand, with reference to the relations of District 21. There was a policy among the United Mine Workers generally to extend the organization into these Non-Union fields for the purpose of protecting the Union mines in the fields where they were organized, for the purpose of protecting them in their scales, working conditions, hours of labor, and so forth, against competitive conditions that might prevail in Non-Union fields. Why, gentlemen, in the Constitution of the United Mine Workers, in the constitution of the district, we will show it was the aim and object and ambition of the organization to extend it as far as they could, and Mr. Drinker says that was a laudible ambition, to organize all the mine workers eligible to membership in the United Mine Workers of America. Why? Because an organization of that kind is no stronger than its weakest link.

257 They have to protect themselves. The Supreme Court has repeatedly ruled that with a factory which is organized and working under certain wage scales, if there is a factory across the street which is not organized and working under a lower wage scale, that factory has an advantage that is impossible to overcome. It becomes necessary for a labor Union to enlarge its membership and make it as complete as possible, just like a Farmer Union, or a Fruit Growers Union, it is as strong as it can make itself, and it becomes weak just as it has losses or unorganized and competitive conditions in the community.

Now, as they say, the evidence that will be introduced will show there were conferences between the Union operators and the miners, tending to show the Union miners were engaged in the policy—they call it a conspiracy, but it was a policy—to organize in Non-Union fields for the purpose of protecting themselves and their employing operators in the Union fields. They claim they were engaged in a conspiracy to restrain interstate commerce, but the evidence will show that Mr. Bache's companies that have been referred to since 1903 when the southwest territory was organized, and when the Miners Union began to function in this part of the country, that Mr. Bache's own companies were engaged in meeting with the miners and engaging in these conferences and entering into contracts with them. So, if there has been any conspiracy he has been a party to it for years, but there has been no conspiracy. When these facts are brought before you, you will see that in these conferences, the miners on one side and

the operators on the other, the miners would have a
258 wage scale that they had figured out in their convention, and decided what they thought they could get. They may ask for more than they expect to get. It may be conditions are bad and the scale will have to be reduced, but in any event these conferences were participated in by the miners on the one hand and by the operators on the other.

When the scale is presented to the operators, they do just exactly what you and I would do. They begin at once to give excuses why they can't pay that wage scale, and that causes these debates upon which they rely in this case to show a conspiracy, between the operators and miners, and these discussions were in regard to wage scales, working conditions, hours of labor, general industrial conditions, the miners, contending for certain wage scales, certain conditions of employment and the operators contending that they were confronted with these competitive Non-Union fields in West Virginia and Colorado and other places, which made it impossible for them to pay such a scale.

Now, coming down to this particular transaction, Mr. Bache's company, as I say, had contract with District 21 by which Union men were employed in all their mines. This contract did not run out until July, 1914, but along in March, 1914, he determined for some reason to go on a Non-Union basis, and the evidence will show that this is what he did: he had his superintendent, Mr. Cameron, come into Ft. Smith, and he dictated to Mr. Cameron a letter which Cameron was to write to Mr. Bache, telling him why he had to go on a Non-Union basis, every word of which was dictated by Bache but signed by Cameron, so Mr. Bache might say his superintendent had opened his eyes to the situation. He took that
259 letter, justified himself with it, went up to Kansas City, hired Burns detectives, five of them at that time, and they afterwards grew until there were more than fifty, I think the testimony will show. Their own testimony will show that for more than a month before the battle of July 17th, there were three shifts on daily of five or six guards, armed with guns. The testimony of one doctor from Ft. Smith will be that he met men and collected more than thirty high-powered rifles from them the day of the battle.

But Mr. Bache brings these guards down to Prairie Creek, a place which Mr. Drinker has told you was a peaceful valley, headed at one end by the town of Huntington, Midland on one side and Hartford on the other. I think the testimony will show everything in that valley was organized. It was a

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Union valley. The clerks were organized, the barbers were organized, the whole valley was Union, and the miners were organized one hundred per cent. There can be two inferences drawn from such a thought as that, but let us agree that it was a Union valley, that Union sentiment prevailed down there. He stretched wires around his camp, and posted notices that the camp was to be opened Non-Union. When they talk about inviting the Union men to work alongside of Non-Union men, it is a joke, because, as Mr Drinker said it involves a violation of the rule and the Constitution, involves destruction of the integrity of the Union. Electric wires were extended around the company so that light could be thrown generally over the camp, and these guards were armed and stationed there. The place opened Saturday. Now, mark you, it opened Saturday, April 4th. The word went out all through the community that some extraordinary thing had happened in that peaceful valley of Hartford, and on Monday, Sunday only intervening, a crowd did gather down there. They called it a picnic. Some of them called it a mob. At any rate, a crowd gathered at a school house, about a quarter or a half a mile from this camp at Prairie Creek, the mining camp of Mr. Bache, where these gun men and guards were stationed, and they held a meeting at this school house, and speeches were made, and a committee was appointed to call upon Mr. Cameron, because Mr. Bache was not there, to ask him if he would not reconsider the proposition; that that was a Union valley; that they did not want a situation of that kind to develop down there, and they wanted him to reconsider the matter and run it on a Union basis.

During the conference in the office of the company between this committee that called on Mr. Cameron and Mr. Cameron, an altercation occurred between some armed guards and some of the belligerent young men down in that valley. There was a crowd there, yes, a crowd of perhaps a thousand or twelve hundred, part of them women and children. They took their dinners there. The business men of Hartford were there, the business men of Huntington were there. A band volunteered from Huntington and went down there. That was a miners' meeting, yes. It was a labor meeting, yes, a Union meeting, of course, but because the valley was Union.

In listening to this evidence you will wonder, how could it be possible that the miners in this valley, with the open shop that Mr. Bache had established on April 4th, could organize a conspiracy in restraint of trade and get to all these towns on April 6th, two days after. It was a

protest, as we shall urge. It was a natural protest of the community against the operation of Non-Union mines there. By the miners? Yes. Why? Because they wanted the Union to be there. By business men? Yes. Why? Because they were friendly to the Union. Let us admit that there was a friendly feeling on their part towards the members of the Union, but there was manifestly no conspiracy in restraint of trade. It was an outbreak, a protest, which had nothing to do with the Sherman anti-trust law.

Now, after this transaction, Mr. Bache got a temporary injunction made returnable on April 4th, and I think there were some marshals down there for a few days and they got some more Non-Union employees and further recruited their gun squad. Now, these gun men came back there, these hired thugs of Mr. Bache, under the sanction of the Federal Court injunction, and there was what might be expected, the development of a truculent spirit. They became arrogant and that condition grew worse, and these men went up and down that peaceful valley and insulted women with indecent proposals, cursed and abused the citizens of that community, and made a target ground of the adjacent farms, as we will show by the farmers themselves whose fields were shot up. They had whiskey in the camp, they got drunk and there developed a truculent, belligerent and arrogant spirit, and they became a nuisance, and finally they went down and shot up the town of Frogtown, about a mile and a half from Hartford and about a mile from the Prairie Creek mine No. 4. It is col-
262 lection of perhaps two hundred people or more, little huts or little shacks, where the Union miners lived. They were all Union miners that lived in Frogtown.

They will ask you to believe their testimony will show the miners themselves shot up the town where their own people were located. The testimony will show that these armed guards did it, and a situation arose there which is sufficient to explain the battle of July 17th and the destruction of this property, because it was a condition which any American community, I care not whether they be in Arkansas or Indiana or Kansas, will resent as long good red blood flows in the veins of the citizens of that community. Talk about American justice. That situation will be thoroughly explained to you when the evidence is adduced before you, as to why that battle occurred. It had nothing to do with any conspiracy in restraint of trade. It was a protest, and an outbreak, a natural uprising, against an intollerable situation which had arisen in that community by reason of the conduct of Mr. Bache and his hired guards and thugs.

The Court: Gentlemen of the Jury, we are about to take a recess until 2:00 o'clock this afternoon, for lunch. During that time, or during any recess or adjournment of the court that may be taken during this trial, you are not to talk to anyone about the case; you are not to allow anyone to talk to you about it. Do you not allow anyone to talk in your hearing about it. If anyone should commence talking to you about the case, or commence talking in your hearing about it,
263 it will be your duty to remind them of the fact that you are jurors engaged in the trial of the case and they must not do so. If after that time they should persist in so doing it will be your duty to report the matter to the Court. Keep your minds entirely free of any opinion concerning the merits until you have heard the entire case. You will now be excused until 2:00 o'clock this afternoon.

(Whereupon at 12:40 P. M., a recess was taken until 2:00 o'clock P. M.)

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264 After Recess. 2 P. M.

The Court: Proceed with the trial.

Mr. Drinker: We offer the deposition of William Green.

Mr. Warrum: There was an order made by Judge Yeomans of this court for the production of ten volumes of the Mine Workers' Journals and the minutes of the Executive Board of the international organization for 1912, 1913, 1914 and 15, and we have them here before the court and wish to produce them, under protest, and would like to file this protest, and the court can act on it.

The Court: I assume you made the protest at the time the order was made, and as the order was made I will let it stand.

Proceed.

Mr. Drinker: Have you a copy of the record? A good many of these depositions are printed in the old record, and if the other side has a copy of the record it will save a great deal of time.

The Court: With their permission, you can read from that record.

Mr. Warrum: We have not a copy here.

The Court: You give them permission to read from the record?

Mr. Warrum: That is all right.

Mr. Drinker: A deposition of WILLIAM GREEN, taken at Indianapolis, Indiana, August 20th and 21st, 1917, before William S. Garber, a Notary Public, appearances for the plaintiff, Henry S. Drinker, Jr., and for the defendants Henry Warrum and L. Grant.

The Court: Cut out all the preliminary part.

265 Mr. Drinker: (Reading): "Q. Mr. Green, you are the Secretary of the United Mine Workers of America?

A. Yes, sir.

Q. How long have you occupied that position?

A. I think since about August, 1913.

Q. And did you occupy any position in the organization prior to that? A. Yes, sir.

Q. What?

A. Well, I served as a sub-district president of the Ohio district for a number of years—as district president of the Ohio district for four years, I think.

Q. Who was secretary before you? Whom did you succeed? A. Mr. Perry.

Q. And how long had he been secretary?

A. I can not recall.

Q. Well, that does not matter. When did Mr White become president?

A. He became president in 1912. I think, or 1911.

Q. April 1st?

A. April 1st, 1911.

Q. When was the United Mine Workers organized?

A. It was organized in 1890.

Q. And it has been in existence continually as an unincorporated association since that time?

A. Yes, sir.

Q. When was the United Mine Workers' Journal started?

266 A. I can not recall the exact date but it was shortly after—to the best of my recollection shortly after the organization was formed.

Q. Mr. Green, has any district organizations been organized and been disbanded, that you know of? A. Yes.

Q. Which ones? A. District No. 16.

Q. Where was that? A. That comprises the Georgia district, and the Maryland district."

The Court: That has nothing to do with this case.

Mr. Drinker: No, sir, the district we have to do with is District 21.

The Court: Then read that.

Mr. Drinker (reading): "A. That comprises the district and the Maryland district.

Q. 15 is not here any more. Has that been disbanded, Colorado? A. 15— the charter of District 15 has been suspended.

Q. And 26 and 28, have their charters been suspended?

A. They are abandoned.

Q. And 29—that was another one in West Virginia, was it not?

A. The charter there was suspended, but it has been reestablished recently."

The Court: Why not come down to District 21?

Mr. Drinker: Because the purpose of this testimony is to show the power of the national organization to suspend the district and take their funds back.

267 The Court: Suppose they have taken no action regarding District 21?

Mr. Drinker: We want to show the status of the national organization and its relation to the district, and this we regard as a very important indication of the way, in practice, that the power has been exercised.

Mr. Warrum: May I make a suggestion, based upon the ruling of the Supreme Court. The same question came before the Supreme Court, and they said that "the argument of counsel for the plaintiff is that because the national body had authority to discipline district organizations, to make local strikes its own and to pay their costs, if it deemed it wise, the duty was thrust on it when it knew a local strike was on, to superintend it and prevent its becoming lawless at its peril. We do not concede that such responsibility is imposed on the national body. A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are ultra vires of the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions

of the two bodies settle conclusively. If the international body had interfered or if it had assumed liability by ratification, different questions would have arisen."

Now, in that case they undertook to prove, and the Su-
268 preme Court passed upon this testimony, that they had the disciplinary control and authority over the district, which they did not exercise.

The Court: I am inclined to the opinion that in order to hold this international you will have to show some action taken by them on authority, in connection with the events we are trying.

Mr. Drinker: And we want to show what power they had to do it.

The Court: If they took the action, the power would be presumed.

Mr. Drinker: It won't take but a minute.

The Court: Go ahead, it is probably quicker that way.

(To which action and ruling of the court the defendants at the time duly excepted and still except.)

Mr. Drinker: I may say that we have boiled this thing down a very great deal, and I will not offer anything but what we have given the sincerest thought.

(Reading): "A. The charter there was suspended, but it has been re-established recently.

Q. Were there ever any districts 3 and 4?
A. Not that I can recall. I can not recall that districts 3 and 4 were ever in existence.
Q. District 19 was disbanded, too, was it not—Tennessee?
A. Suspended. The charter was suspended.
Q. When these districts were suspended what was the practice? How was that done?
A. The international organization took charge of the territory embraced within the district covered by the char-
269 ter rights of the district.
Q. How did they do that?
A. The affairs of the district were administered by the international union instead of by a full and complete set of district officers?
Q. What became of the district officers?
A. They were discontinued.

Q. And if they had any funds they came back to the international union, did they?

A. Oh, yes; they reverted to the international union.

Q. By what kind of a resolution or action was that done? By a resolution of the international?

A. The resolution of the Executive Board.

Q. They would pass a resolution that the district was suspended or abandoned and then notify the district officers, would they? Where a district was suspended they would pass a resolution that the district was suspended and notify the district officers to that effect? A. Yes, sir.

Q. Then would the district officers go out of office when a district was suspended? A. Automatically.

Q. What would be the difference between the suspension of a district and the abandonment of it?

A. Well, the difference is this: That a suspension of a district merely means that the district autonomy has been suspended, and that the international union itself directly
270 administers the affairs of the district. The work within that district goes along under the authority and control and direction of international union instead of under the control of district officers. Usually the suspension is temporary and later on the charter and the district and all its rights are restored. When a district is abandoned the charter and supplies for the district are withdrawn, and all activity.

Q. Then it is just as if it never had existed?

A. Just as if it never had existed.

Q. And the same procedure was gone through in case of the suspension or abandonment of a local, was it?

A. I think there is a little difference.

Q. How would the suspension or abandonment of a local union be brought about?

A. The international president has authority under our law to revoke the charter of a local union.

Q. How would he do that?

A. Notify the local union that the charter of the local was revoked.

Q. And then its funds would revert to the international union and not to the district?

A. The funds of the local union would revert to the international union, and they would not exist as a local union any longer.

Q. In order for them to exist they would have to be recharterd and the charter signed by the president?

A. A new charter issued, and the local union re-char-
271 tered.

Q. I understand that where the district branch was abandoned, that would be by a resolution of the International Executive Board of the same general nature as suspension, except that it would go further in its action and in its effect?

A. Yes, the International Executive Board would take that action and the district would be abandoned.

Q. And the funds would come back, if they had any, to the main union?

A. Yes, sir, the property and funds belonging to a district revert to the international.

Q. Then the president has not any authority to suspend or revoke the charter of a district branch?

A. The International Executive Board has that authority.

Mr. Drinker: Mr. Green presents copies of constitutions dated 1890, 1895, 1904, 1905, 1906, 1908, 1912—that is bound in with the Illinois constitution—1914 and 1916. 1914 is set out in your answer and you need not bother with that.

Q. These constitutions that you have produced are the constitutions of the United Mine Workers of America adopted on the respective dates that you have named, are they?

A. Yes, sir.

Q. And you identify them as such? A. Yes, sir.

Q. Mr. Green, I have asked you to produce certain expense accounts of certain international officers and board members for certain districts during certain specified periods.
272 Mr. Adams has brought in these general files. Would you kindly pick out for me the accounts for the periods and officers indicated?"

(Then skipping to page 372, top of the page):

"Q. Are the international organizers employed particularly to work in specific districts or anywhere?

A. They are employed to work in special, specific districts. They are assigned by the International President to work where he feels their services are needed.

Q. The members of the Executive Board work particularly in their own districts, do they?

A. Wherever the International President assigns them to work.

Q. Do they work more particularly in the districts to which they are attributed?

A. Yes. Well, as a general rule they work in their own districts but they are subject to the direction—they are un-

der the direction of the International President and he has authority to assign them to work wherever he feels that their services are needed."

Then skipping to the bottom of page 374:

"Q. Now among the expense accounts which you have handed me there is one from James Mullen, Midland, Arkansas, dated April 15, 1914, for the first of April, 1914, showing under date of April 13, 1914, railroad fare from Ft. Smith to Midland 75 cents, livery 25 cents, under date of April 4th, Midland to Kansas City, railroad fare $11.05; under date of April 8th, railroad fare Kansas City to Ft. Smith, $10.15— is that correct?

273 Yes, those are the items on his expense account of that date.

Q. Among those papers there is also an account of James Mullen, dated April 30th, 1914, for the last half of April, 1914,"—

Mr. Warrum: We would like to renew our objection at this point, and the defendant, the international organization, separately objects to the reading of this evidence, because under the opinion of the Supreme Court it is immaterial, and does not throw any light on the issues in this case.

I would like, since this question will be constantly coming up, I would like to renew my objection in the briefest form possible, and wish to make a statement to the court in connection with it. All of this evidence he is reading from the deposition was before the Supreme Court on the appeal of this case, and the questions which the Supreme Court said it had to pass upon were as follows; there are five principal questions pressed by the plaintiffs in error. The first is that there was a misjoinder of parties plaintiff. The second is that the United Mine Workers of America, District No. 21, United Mine Workers of America and the local unions made defendants, are unincorporated associations and not subject to suit, and therefore should have been dismissed from the case on motions seasonably made. The third is that there is no evidence to show any agency by the United Mine Workers of America, in the conspiracy charged or in the actual destruction of the property, and no liability therefor.

And this is the discussion which the Supreme Court gives upon that point:

274 "The next question is whether the international union was shown by any substantial evidence to have initiated, participated in or ratified the interference with plain-

tiffs' business which began April 6th, 1914, and continued at intervals until July 17, when the matter culminated in a battle and the destruction of the Bache-Denman properties. The strike was a local strike declared by the president and officers of the district organization No. 21, embracing Arkansas, Oklahoma and Texas. By article XVI of the international constitution, as we have seen, it could not thus engage in a strike if it involved all or a major part of its members without sanction of the international board."

Now that constitution which was revised by the Supreme Court is made a part of this deposition, and section 16 reads as follows: "No district shall be permitted to engage in a strike involving all or a major portion of its members, without the sanction of an International Convention or the International Executive Board.

Section 2. Districts may order local strikes within their respective districts on their own responsibility, but where local strikes are to be financed by the International Union, they must be sanctioned by the International Executive Board."

The court said "there is nothing to show that the International Board ever authorized it, took any part in preparation of it or in its maintenance. Nor did they or their organizations ratify it by paying any of the expenses. It came exactly within the definition of a local strike in the constitutions of both the national and the district organizations. The district made the preparations and paid the bills. It does appear that the president of the national body was in Kansas City and heard of the trouble which had taken place on April 6th at Prairie Creek, and that at a meeting of the International Board he reported it as something he had [bearned] on his trip for their official information. He said that a man named Bache had demanded in a suit an accounting of the funds of the Southwestern Coal Operators' Association, that when he secured the information, he 'went down to Arkansas and started to run his mine non-union. The boys simply marched in on him in a day down there and kicked his Colorado guards out of there and broke their jaws and put the flag of the United Mine Workers on top of the tipple and pulled the fires out of the boilers, and that was all there was to it, and the mines have been idle ever since. I do not say our boys did this, but I mean the people from all over that country marched in and stopped the work, and when the guards offered resistance, several of them were roughly handled but no lives were lost,

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as I understand it.' Later in May he made a long speech at a special convention of District No. 21 held at Ft. Smith for a purpose not connected with this matter in which he referred especially to the Colorado and West Virginia strikes in which the international union was engaged with all its might, but he made no specific allusion to the Prairie Creek difficulty. It does appear that in 1916, after Stewart, the President of District 21, had been convicted of conspiracy to defeat the injunction issued to protect the Prairie Creek mines in this conflict, and had gone to the penitentiary
276 and was pardoned, White the National President, wrote a letter thanking the president for this, and that subsequently he appointed Stewart to a position on a district committee. It would be going very far to consider such acts of the president alone a ratification by the International Board creating liability for a past tort. The president had no authority to order or ratify a local strike. Only the board could do this. White's report, in an executive meeting of the board of the riot of April 6th, shows sympathy with its purpose and a lack of respect for law, but does not imply or prove on his part any prior initiation or indicate a desire to ratify the transaction as his work. The board took no action on his report. He did not request it."

I think at the same time, if I would read a little further, because it will be constantly coming up here,—

"Communications from outsiders and editorials published in the United Mine Workers' Journal giving accounts of the occurrences at Prairie Creek and representing that the troubles were due to the aggression of the armed guards of the mine owners, and that the action of the union men was justified because in defense of their homes against night attacks, do not constitute such ratification by the board or the president after the fact as to make the international union liable for what had been done.

The argument of counsel for the plaintiffs is that because the national body had authority to discipline district organizations, to make local strikes its own and pay their cost, if it deemed it wise, the duty was thrust on it when it knew a local strike was on, to superintend it and prevent its
277 becoming lawless at its peril. We do not conceive that such responsibility is imposed on the national body. A corporation is responsible for its wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are ultra vires of the corporation. But it must be shown that it is in the business

of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions of the two bodies settle conclusively. If the international body had interfered or if it had assumed liability by ratification, different questions would have arisen.

Counsel cites section 2 of article XII of the constitution of District No. 21 to show that questions of all strikes must be referred by district officers to the national president for his decision, and suggest that in the absence of a showing it is to be inferred that they did so hear and the strike was approved by him. They misconstrue the section. It applies only to a proposed strike which would affect two districts and to which one district is opposed. It does not apply to local strikes like this.

But it is said that the district was doing the work of the international and carrying out its policies and this circumstance makes the former an agent. We can not agree to this in the face of the specific stipulation between them that
278 in such a case unless the international expressly assumer resposibility, the district must meet it alone. The subsequent events showing that the district did meet the responsibility with its own funds confirm our reliance upon the constitution of the two bodies.

We conclude that the motions of the international union, the United Mine Workers of America, and of its president and its other officers, that the jury be directed to return a verdict for them, should have been granted."

When it comes to the district, they discussed it in two places. One as to its participation in it, and held that the evidence was insufficient to show they participated, and second whether they participated in restraint of trade, and they held that they did not. On the question of the international organization, they held there was not even evidence to show any participation or any agency, and in doing that they construed the two constitutions, the one that was called for in Mr. Green's deposition, and they held that the only way in which this organization could be held to respond to damages in an action of this kind was to show that they first ratified by action of the international executive board.

There is nothing in counsel's statement to the jury that they have evidence of that kind, and they have not such evi-

dence, and it is burdening the record for them to go over all of the same territory and road that was traveled in the other case, when that road is simply along the line that the Supreme Court held could not affect the international. If it did not prove anything in that case, it can not in this case.

279 Mr. Drinker: If your Honor please,—

The Court: I have some rather fixed ideas in regard to the matter, and of course I have read the decision there. Now, as Chief Justice Taft states, you take a corporation that can only act by and through its officers, and applying the same rule that the court does to this unincorporated company, it is only when the act is in the scope of their power that the national association may be bound. Now, they have, by their constitution, limited the power of their officers. Will you have evidence here that the officers may bind an association, and did act in and authorize and ratify this trouble down here.

Mr. Drinker: This is Mr. Mullen, whose account we were reading from, and he is a member of the international, and was representing them.

Mr. Warrum: That was before the court before.

Mr. Drinker: The Supreme Court said it was not enough. I may say that the evidence directly connecting the international, which my friend assumes he knows in advance, which we will have to present, and which we think is important, in addition to these records, which in our opinion bring us within the decision of the Supreme Court, will be presented. I don't want to say exactly what it is at this time. We have to make a beginning, but the total presentation of all the items of evidence against the international union will take a very short time.

The Court: I will hear it; I will have to hear it in the end, and merely an objection here to the introduction of evidence, it is dangerous to sustain, and for that reason I will overrule it at this time.

280 To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Drinker: Of course, we will not be through with it until the case is finished. I would be glad to make a short statement—

The Court: I prefer that this go on.

Mr. Drinker: I don't want to be understood in the slightest degree as agreeing with my friend's construction of the opinion of the Supreme Court.

The Court: What consolation do you get from that opinion?

Mr. Drinker: We will prove it.

The Court: You have some job.

Mr. Lucas (reading): Q. Among those papers there is also an account of James Mullen, dated April 30th, 1914, for the last half of April, 1914, showing under date of April 21st, railroad fare, Clarksville to Ft. Smith, $1.85, livery $2 00; April 21st, railroad fare, Ft. Smith to Midland, 75 cents, livery 25 cents; April 24th, railroad fare, Ft. Smith to Russellville, $2.40; April 25th Russellville to Midland, railroad fare $3.15, livery $1.50; April 26th, railroad fare, Midland to Ft. Smith 75 cents and livery 25 cents; April 28th, railroad fare, Ft. Smith to Jenny Lind and return $1.50; April 30th, railroad fare, Ft. Smith to Hartford, $2.20, livery $2.00,—is that correct?''

Mr. Warrum: May we have a stipulation that exceptions may be saved in the record? At the other trial we had an agreement that exceptions may be saved in the record to the ruling of the court, without the necessity of saving them each time.

The Court: To the same certain class of evidence
281 you have exceptions to the ruling, but it would have to be the same class of evidence.

Mr. Warrum: Without formally stating that we save the exception?

The Court: As long as it goes to the same class of evidence.

Mr. Warrum: We object to each of these items.

Mr. Drinker: Are you sure that you understand what Mr. Warrum wants, your Honor? We have the objection to these objections, but when we do object and the objection is overruled, that that automatically saves an exception.

The Court: Very well, you may have that.

Mr. Drinker: It is agreed that when an objection by counsel is made, and direction of the court, that the record will show when an objection is made and overruled, that an exception thereto is noted.

Mr. Warrum: We make the same objection to this last question.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "A. That is correct.

Q. In Mr. Mullen's expense account, dated May 15th, 1914, for the first half of May, 1914, there appears the following items: May 2nd, railroad fare, Ft. Smith to Indianapolis, $20.00. It further appears that there is an item for hotel at Indianapolis on May 2nd to May 10th, inclusive, $3.50 per day; May 11th, railroad fare, Indianapolis to Ft.
282 Smith, $20.00; May 12th, railroad fare, Mildand to McAlester, Oklahoma, $3.10; May 14th, railroad fare, McAlester to Ft. Smith, $2.65; May 15th, railroad fare, Ft. Smith to Midland 75 cents, livery $1.50,—is that correct?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. Correct.

Q. In the expense account of Mr. Mullen, dated May 31st, 1914, for the last half of May, 1914, the following May items appear: May 16th, livery, Midland to Prairie Creek, $2.50; May 17th, railroad fare, Midland to Ft. Smith, 75 cents, May 18th, livery at Ft. Smith $1.00; May 19th and May 20th, hotel bill at Ft. Smith $3.00 per day; May 23rd, railroad fare, Ft. Smith to Midland 75 cents; May 24th, railroad fare Midland to Ft. Smith, 75 cents, livery 25 cents. Are those items correct?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. Yes, sir, that is correct.

Q. In Mr. Mullen's account, dated June 15th, 1914, for the first half of June, 1914, the following items appear: June 3rd, railroad fare, Ft. Smith to Midland, 75 cents, livery 25 cents; June 9th, railroad fare, Ft. Smith to Midland and return, $1.50; June 10th, railroad fare, Ft. Smith to Excelsior, 55 cents; rig to Midland $2.00. Are those items correct?"

Mr. Warrum: The same objection.

283 The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. Yes, sir.

Q. In Mr. Mullen's account dated June 30th, 1914, for the last half of June, 1914, the following items appear: June 25th, railroad fare, Ft. Smith to Sutter and return, $1.75; June 26th, railroad fare, Ft. Smith to Midland, 75 cents, livery 25 cents; June 30th, railroad fare, McAlester to Ft. Smith, $2.95. Are those items correct?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. Yes, sir.

Q. Now in Mr. Mullen's account dated July 15th, 1914, for the first half of July, 1914, the following items appear; July 5th, livery, Midland to Prairie Creek and return $1.00; July 6th, railroad fare, Midland to Spadra, $2.55; July 7th, railroad fare Spadra to Midland, $2.55. Are those correct?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. Yes, sir.

Q. In Mr. Mullen's account for the last half of July, 1914, dated July 31st, 1914, the following items appear: July 21st, railroad fare, Kansas City to Ft. Smith, $10.30; July
284 22nd, railroad fare Ft. Smith to Midland 75 cents, livery 25 cents,; is that correct?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"A. Yes, sir.

Q. In Mr. Mullen's account dated October 31st, 1914, for the last half of October, 1914, the following items appear:

October 28th, railroad fare, McAlester to Midland, $3.70, livery 25 cents, is that correct?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"A. That is correct.

Q. Now I understand that all the items that I have read in the connection with Mr. Mullen's expense accounts are correct, or they appear in these statements as I have read them?

A. They appear in the statements as you have read them."

Mr. Drinker: Now, skip to page 388, the third question on page 388.

"Q. Is this, as far as you know, a correct copy contained in this pamphlet, "United Mine Workers of America, District No. 6, Ohio, for Scale Year April 1, 1912, to March 31, 1914", which I hand you?

A. I would not regard myself as competent to testify regarding this because I have never seen the original
285 copy of the Chicago agreement nor was I was in attendance at the convention at Chicago when that agreement was negotiated.

Q. Well, these printed copies are used by everyone in your organization as being valid and correct, are they not, for all purposes? Are not those copies used by you and the other officers in connection with all your dealings as correct copies of that Chicago agreement?

A. They are printed in these scales as copies of the Chicago agreement.

Q. And used as such by,—

A. They are accepted as such.

Q. Is it not customary for all parties, operators and miners, to use these printed copies which you have in your files in connection with all dealings under this agreement?

A. I can only answer that question by repeating what I said, that that is accepted as a copy of the Chicago agreement.

Q. Well, it is not customary and usual and the regular thing practiced in connection with all these agreements that after the original is signed, copies are printed, and they are used by all parties instead of the originals in the same way that the convention proceedings are used in the printed copies instead of in the typewritten originals.

Subject to that objection (an objection having been made there), will you please answer the question? I will explain that when I say, 'all these agreemnts', I refer to the printed copies of agreements between the various districts and operators that you have produced here, aggregating some fifty say in number.

286 A. It is customary for us to accept these printed copies of agreements made between operators and miners in the various districts which are sent to the international office for the purpose of being placed on file."

Mr. Drinker: Now, skip to page 390, the second from the bottom.

Mr. Lucas (reading): "Mr. Drinker: Now, Mr. Stenographer, will you please mark this pamphlet for identification, the copy of the so called Chicago agreement, dated January 28th, 1918, on pages 3, 4 and 5 of the pamphlet marked Exhibit No. 1, as identified by this witness.

The notary did as requested and the said Chicago agreement dated January 28th, 1898, beginning on page 3 of the pamphlet marked Exhibit No. 1, referred to by Mr. Drinker, was marked by the Notary, 'Green Dep. Exhibit 2, W. S. G. Notary'.

Mr. Drinker: I now offer in evidence the agreement dated Chicago, Illinois, January 28, 1898, identified and marked 'Green Dep. Exhibit No. 2.'

The said so called Chicago agreement, offered and introduced in evidence by Mr. Drinker, being as follows:"

Mr. Warrum: Now, we renew our objection to the introduction of this, as under the opinion of the Supreme Court it would throw no light on the issues in this case.

The Court: Let it go in, or such parts of it as may be thought material.

Mr. Drinker: I would like to put the whole agreement into the record with the signatures, but if the stenographer can copy it, I will only read the eighth paragraph.

287 The Court: Very well, opposing counsel can read any part they wish.

Mr. Drinker: I want it all considered in the record.

The Court: All right.

To which action and ruling of the court the defendants at the time duly excepted and still except.

(The instrument referred to and offered in evidence is in words and figures following, to-wit:)

"An Agreement

Chicago, January 28, 1898.

Contract Between the Operators of the Central Competitive Coal Field and the United Mine Workers of America:

The following agreement, made and entered into in joint interstate convention in this city (Chicago, Ill.), January 26, 1898, by and between the operators and miners of Illinois, Indiana, Ohio and Western Pennsylvania known as the Pittsburgh Thin Vein District, witnesseth:

1. That an equal price for mining screened lump coal shall hereafter form a base scale in all the districts above named, excepting the State of Illinois, the Block Coal District of Indiana to pay ten cents per ton over that of Hocking Valley, Western Pennsylvania and Indiana Bituminous District, and that the price of pick run of mine coal in Hocking Valley and Western Pennsylvania shall be determined by the actual percentage of screenings passed through such screen as is hereinafter provided, it being understood and agreed that screened or run of mine coal may be mined and paid for on
288 the above basis at the option of the operators, according to market requirements, and the operators of Indiana bituminous shall also have like option of mining and paying for run of mine or screen coal.

2. That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the Bituminous District of Indiana shall be uniform in size, six feet wide by twelve feet long, built of flat or Akron-shaped bar of not less than five-eights of an inch surface, with one and one-fourth inches between bars, free from obstructions, and that such screen shall rest upon a sufficient number of bearing to hold the bars in proper position.

3. That the Block Coal District of Indiana may continue the use of the diamond screen of present size and pattern with the privilege of run of mine coal, the mining price of which shall be determined by the actual screenings, and that the State of Illinois shall be absolutely upon a run of mine system, and shall be paid for on that basis.

4. That an advance of ten cents per ton of 2000 pounds for pick-mined screened coal shall take effect in Western Pennsylvania, Hocking Valley and Indiana Bituminous Districts on April 1, 1898, and that Grape Creek, Ill., and the Bi-

tuminous District of Indiana shall pay forty cents per ton run of mine coal from and after same date based upon sixty-six cents per ton screened coal in Ohio, Western Pennsylvania and the Indiana Bituminous District, same to continue in force until the expiration of this contract.

5. That on and after April 1, 1898, the eight hour work day, with eight hours pay, consisting of six days per week, shall be in effect in all the districts represented, and
289 that uniform wages for day labor shall be paid the different classes of labor in the fields named, and that internal differences in any of the states or districts, both as to price or conditions, shall be referred to the states or districts affected for adjustment.

6. That the same relative prices and conditions between machine and pick-mining that have existed in the different states shall be continued during the life of this contract.

7. That present prices for pick and machine mining and all classes of day labor shall be maintained in the competitive states and districts until April 1, 1898.

8. That the United Mine Workers' organization, a party to this contract, do hereby further agree to afford all possible protection to the trade and to other parties hereto against any unfair competition resulting from a failure to maintain scale rates.

9. That this contract shall remain in full force and effect from April 1, 1898, to April 1, 1899, and that our next annual interstate convention shall convene in the City of Pittsburgh on the 3rd Tuesday in January, 1899. Adopted.

Committee on behalf of Operators:

Illinois: J. H. GARATHY,
E. T. BENT.

Indiana Bituminous: W. S. BOGLE.

Indiana Block: C. B. NIBLOCK.

Pennsylvania: J. C. DYSART,
F. M. OSBORNE.

290 Committee on behalf of Miners:

Illinois: J. M. HUNTER,
W. D. RYAN.

Indiana Bituminous: W. G. KNIGHT,
J. H. KENNEDY.

Indiana Block: J. E. EVANS.

Ohio: W. E. FARMS,
T. L. LEWIS.

Pennsylvania: PATRICK DOLAN,
EDWARD M'KAY.

West Virginia: H. STEPHENSON,
FRED DILCHER,
JOHN FAHY,
HY. STEPHENSON,
EWARD M'KAY,
J. H. KENNEDY,
W. D. EYAN.

Members Nation Executive Board U. M. W. or A.

W. C. PEARCE, Secretary-Treasurer.
M. D. RATCHFORD, President.
JOHN MITCHELL, Vice President."

Mr. Drinker: That is considered as all read?

The Court: It may be.

Mr. Drinker: I am trying to save time.

The Court: Very well, I will help you all I can.

291 Mr. Drinker: Now, page 414, that is 24 pages I have skipped, your Honor.

Mr. Lucas (reading): "Mr. Green, you have produced in answer to the call the reports of the officers of the international union covering 1900 to 1916, inclusive, I understand, such reports being contained in the printed proceedings of the various conventions of the United Mine Workers of America?

A. Those are the reports of the conventions from the year 1900 to 1916, as we have them on file.

Q. Have you any more formal copies of those proceedings than those to which you have produced? A. No, sir.

Q. Those are the ones which you have in the office and are for the purpose of reference as authority?

A. Yes, sir. There may be one volume missing there, as you have explained, the one of 1914.

Q. Have you got that? A. No; those are all we have.

Q. Now do those proceedings contain the annual reports or biennial reports of the president and vice president and secretary-treasurer of the international union? A. Yes, sir.

Mr. Drinker: The stenographer will please mark these proceedings for identification Exhibit No. 29 to the deposition of William Green, a, b, c, d, and etc., as far as necessary.

The Notary and stenographer did as requested, marking the volumes referred to as Exhibit No. 29-a, b, c, d, e, f, g, h, and Exhibit No. 29-h2, Exhibit No. 29-i, etc., to 29-r, inclusive.

292 Q. Mr. Green, I hand you the volume, printed, produced by you in answer to the call, which the stenographer has marked '29-a,' on the title page, and ask you to describe what that book is.

After the inspection of the book by counsel for the defendants.

A. Well, this book is a copy of the proceedings of the eleventh annual convention of the United Mine Workers of America, the twelfth annual convention of the United Mine Workers of America, the minutes of the thirteenth annual convention of the United Mine Workers of America, the minutes of the special convention of the United Mine Workers of America and the minutes of the fourteenth annual convention of the United Mine Workers of America.

Q. Mr. Green, I hand you the remaining volumes which have been marked by the stenographer as Exhibits 29-b to 29-r, inclusive, and ask you what they are,"—

Mr. Drinker: Now, skipping down to the middle of the page, he answers:

"These are copies of the proceedings of the conventions of the United Mine Workers of America held between the years 1904 and 1916.

Q. Inclusive? A. Inclusive.

Mr. Drinker: The stenographer will please mark the seven bound printed volumes produced by the witness Green in answer to the call by counsel for the reports of the joint con-

ferences of miners and operators in the four competi-
293 tive states.

The books referred to, comprising eight volumes instead of seven, as stated by Mr. Drinker, were marked by the reporter for identification as Exhibits 30-a to 30-h, inclusive.

Q. Mr. Green, I hand you the bound printed volumes produced by you in response to the call as above stated, these volumes purporting to contain joint conferences of miners and operators, CO and CN 1901, 1902, 1903, 1904, 1906, 1908, 1910, 1912 and 1914 and 1916, marked Exhibits 30a to 30h, inclusive, and ask you to state what they are.

A. These are copies of the proceedings of joint conferences of miners and operators of the Central Competitive districts held during the year 1901, 1902, 1903, 1904, 1906, 1908, 1910, 1912, 1914, and 1916.

Q. What districts comprise the Competitive Field?

A. Western Pennsylvania, Ohio, Indiana and Illinois."

Mr. Drinker: Now on page 417, the middle of the page,— "How many members are there in the United Mine Workers of America, approximately."

Mr. Warrum: Now, if the court please, that is cross examination, and I have never understood how they could offer,—

Mr. Drinker: I beg your pardon, I did not know I had gotten that far.

The Court: When a deposition is taken and it is lodged in the court, it is open to be read by anybody.

Mr. Drinker: I will make a suggestion that I will skip all but a very little.

Mr. Warrum: That is the rule, of course, but I sup-
294 posed that the rule was applied when we refused to read it.

The Court: No, they can read your cross examination to make out their case.

Mr. Warrum: Yes, sir, if I don't read it; I don't like for them to read it. The court certainly has some discretion,—

The Court: We assume that they will read it, and if they don't, you may.

Mr. Drinker: Then I am to surrender,—

The Court: Pass it now, and if they don't read it, you may.

Mr. Warrum: I will first read the entire contract executed at Chicago between the miners and the union operators, on January 28th, 1898, the contract between the operators of the Central Competitive Field and the United Mine Workers of America.

(The contract referred to was heretofore copied in the record, and appears on pages 64 to 67.)

Mr. Drinker: The books that you asked us to produce are out in the hall, a great pile of them, and at the other trial the court designated a room where the other side could have access to them. If we could have that arrangement now, I understand Mr. Warrum's associates wish to examine them.

The Court: See if the clerk can arrange that.

Mr. Warrum: I will now read the cross examination:

"Q. I do not believe you have stated your full name? State it to the Notary. A. William Green.

Q. What office do you occupy in the United Mine Workers of America?

295 A. International Secretary-Treasurer.

Q. How long have you been Secretary-treasurer?

A. I think since about August, 1913.

Q. Where is your residence? A. Coshocton, Ohio.

Q. How long have you been a member of the United Mine Workers of America?

A. I have been a member of the United Mine Workers of America ever since its formation.

Q. That would be when? A. 1890.

Q. Did you ever occupy any official position in the District of Ohio? A. Yes, sir.

Q. What?

A. I served as president of a sub-division and later as President of the Ohio District.

Q. What years were you president of the Ohio District?

[Q.] From 1906 to 1910 inclusive.

Q. What is the United Mine Workers of America? Just state briefly its nature and purpose. It is a labor union, is it not?

A. The United Mine Workers of America is a labor union.

Q. Composed of what class of workmen?

A. Coal men. Men employed in and around coal mines.

Q. Those who labor in coal mines? A. Yes, sir.

Q. It does not include those who are employed as superintendents of coal mines or in clerical capacities by op-
296 erators, does it? A. No, sir.
Q. Cashiers or officers of mining companies?
A. No, sir; those are not eligible to the union.
Q. It is the laboring men? A. The laboring men.
Q. And it is a labor union? A. Yes, sir.
Q. How many members are there in the United Mine Workers of America, approximately?
A. There are approximately 400,000.
Q. How many members were there approximately in 1914—just approximately? A. Oh, 350,000.
Q. And in 1912? A. About the same number.
Q. Is this membership a permanent or shifting membership? A. Well, the membership varies.
Q. There may be a great many members of the union today who were not members last year; is that true?
A. Yes, sir.
Q. And a great many who were members last year who are not members today; is that true? A. Yes.
Q. Then the membership varies in its personnel by reason of new members joining or old members dying or leaving the work or quitting the union?
A. Going into other lines of industry.
297 Q. For all those reasons?
A. For all those reasons.
Q. Now you say some 400,000 miners constitute the miners union; that is the International Union, is it?
A. The International Union of United Mine Workers of America.
Q. Has it any membership outside of the United States?
A. Yes, sir.
Q. Where about outside of the United States?
A. In the Dominion of Canada.
Q. At what places? A. British Columbia.
Q. You have some at British Columbia?
A. Yes, sir; and Vancouver Island.
Q. Have you some in Nova Scotia?
A. We had a small membership there but I am not certain as to whether—
Q. You have had during these years inquired about Locals in Nova Scotia? A. Yes.
Q. Does the United Mine Workers of America embrace the workmen in the anthratice mines in Pennsylvania?
A. Yes, sir.
Q. How many members have you in the anthracite mines?

A. The membership varies there. I think there is—there are approximately one hundred thousand members there.

Q. And they are engaged in the production of anthracite coal? A. Yes, sir.

298 Q. Taking it out of the ground?

A. Yes, sir.

Q. And they are now and have been for years in varying numbers since 1890 members of the union?

A. Yes, sir.

Q. On equal terms with other members?

A. Yes, sir.

Q. Now how is the union governed—by a constitution?

A. By the constitution.

Q. How is that constitution adopted and changed, if changed from time to time? In annual conventions and biennial conventions?

A. In annual and biennial conventions.

Mr. Warrum: I will ask the notary to mark this paper which I hand him as Defendant's Exhibit No. 1, deposition of William Green.

The notary did as required.

Q. Mr. Green, I will hand you Defendant's Exhibit No. 1, as marked by the Notary, and ask you to state what that is?

A. That is a copy of the Constitution of the International Union United Mine Workers of America effective during the year 1914.

Q. Well, adopted and effective until changed; is that right? A. Yes, sir.

Mr. Warrum: Now we will offer in evidence and introduce in evidence Defendants' Exhibit No. 1, the constitution of the International Union in 1914.

299 The said copy of the Constitution of the International Union United Mine Workers of America in 1914, marked Defendants' Exhibit No. 1, so offered, being in the words and figures following and is hereto attached."

I only wish to read part of this, but ask that the entire constitution be set out in the record, as if read.

The Court: Very well.

The document referred to, and so offered in evidence, is in words and figures following, to-wit:

"Constitution of International Union United Mine Workers of America (Union Label) Adopted at Indianapolis, Indiana, effective April 1, 1914.

Preamble. There is no truth more obvious than that without coal there could not have been such marvelous social and industrial progress as marks present day civilization.

Believing that those whose lot it is to toil within the earth's recesses, surrounded by peculiar dangers and deprived of sunlight and pure air, producing the commodity which makes possible the world's progress, are entitled to protection and the full social value of their product, we have formed the 'United Mine Workers of America' for the purpose of establishing by lawful means, the principles embraced in the body of this constitution.

Constitution.

Article I.

Name.

This organization shall be known as The United Mine Workers of America. It shall be International in scope, and
300 as an organization shall not be committed to or favor any particular religious creed; neither shall affiliation herewith interfere with the religious or political freedom of individual members.

Article II.

Objects.

First. To unite in one organization, regardless of creed, color or nationality, all workmen eligible for membership, employed in and around coal mines, coal washers, and coke ovens on the American Continent.

Second. To increase the wages, and improve the conditions of employment of our members by legislation, conciliation, joint agreements or strikes.

Third. To demand, that not more than eight hours from bank to bank in each twenty-four hours shall be worked by members of our organization.

Fourth. To strive for a minimum wage scale for all members of our craft.

Fifth. To provide for the education of our children by lawfully prohibiting their employment until they have at least reached sixteen years of age.

Sixth. To secure equitable statutory old age pension and workmen's compensation laws.

Seventh. To enforce existing just laws and to secure the repeal of those which are unjust.

Eighth. To secure by legislative enactment, laws protecting the limbs, lives and health of our members; establishing
our right to organize; prohibiting the use of deception
301 to secure strike breakers; preventing the employment
of privately armed guards during labor disputes; and such other legislation as will be beneficial to the members of our craft.

Article III.

Jurisdiction.

Section 1. The International Union shall be composed of workmen eligible for membership in the United Mine Workers of America, and may be divided into Districts, Sub-Districts and Local Unions.

Sec. 2. All Districts, Sub-Districts and Local Unions must be chartered by, and shall be under the jurisdiction of and subject to the laws and rulings of the International Union.

Sec. 3. In all questions of dispute, appeals and grievances affecting our members (unless restricted by joint agreement) the decision of the International Executive Board shall be final and binding until reversed by an International Convention.

Article IV.

Districts.

Section 1. Districts may be formed with such number and territory as may be designated by the International Officers and may adopt such laws for their government as do not conflict with the laws or rulings of the International Union or Joint Agreements.

Sec. 2. Districts may sub-divide territory within their own boundaries but the International Executive Board shall have authority to change the boundaries of Districts as conditions
may require; but no change of boundaries shall be made
302 until the officers of Districts and Local Unions affected
by such change have been consulted, and all local unions must pay all tax and assessments due the District to which they were attached before change of boundary was made.

Article V.

Sub-Districts.

Sub-Districts may be formed and assigned such numbers and territory as may be designated by the District of which they are a part, and may adopt such laws for their government as to not conflict with the laws or rulings of the International or District Unions or Joint Agreements.

Article VI.

Local Unions.

Section 1. Local unions may adopt such laws for their government as to not conflict with the laws or rulings of the International, District or Sub-District Unions or Joint Agreements.

Sec. 2. Each Local Union shall have the right to penalize its own members, or (except as prohibited by Section 17 or Art. 15) debar from membership any applicant for membership therein, but any member so penalized or any person so debarred shall have the right of appeal in consecutive order to the Sub-District, District and International Unions, any one of which branches shall have authority to reverse the decisions of the Local Union; and any Local Union debarring any applicant from membership shall give such applicant written reason for his debarment.

Sec. 3. If in the judgment of the officers of the Inter-
303 national, District or Sub-District Unions, any Local Union has taken any action opposed to the interest of the United Mine Workers, the International Union or the District or Sub-District Unions having jurisdiction over the Local Union shall have the right to reverse the action of the Local Unions.

Sec. 4. Should any Local Union be dissatisfied with a decision of any of the governing branches (unless prohibited by joint agreement) it shall have the right of appeal to the branch next in authority until a final decision is reached, as provided in Section 3 of Article 3.

Sec. 5. Where it is decided that any branch of the Organization has done an injustice to any member, or applicant for membership, the branch responsible for the injustice must compensate such member or applicant for time lost and expense incurred while defending his rights, and any such defendant shall be restored to all former rights and privileges in the organization.

Article VII.

Officers.

The officers of the International union shall be one President, one Vice-President, one Secretary-Treasurer, three Tellers, three Auditors, the Delegates to the American Federation of Labor Convention and one Executive Board Member from each of the Districts over which the United Mine Workers has jurisdiction, the last named of which shall constitute the International Executive Board.

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Article VIII.

Qualification for Office.

Section 1. Any member in good standing in the Organization shall be eligible to hold office in the International Union if employed at our trade, or officially connected with the Organization, or engaged as permitted by Section 2 of Article 20 and has never been found guilty of misappropriating any of the Organization's funds, and has had five years experience as a mine worker and has been a member for three consecutive years at the time of his election, and except as may be hereinafter provided.

Sec. 2. No two Auditors shall be elected from the same District. In the event of any two candidates for Auditor from the same district receiving a plurality of votes cast, the one receiving the lesser number shall drop out and the candidate from some other District receiving the next highest number of votes shall be declared elected. This rule shall also apply to the election of Tellers.

Sec. 3. No member shall hold two salaried offices in the International Union at the same time, neither shall any member hold a salaried office in any two branches of the organization at the same time, except delegates to the American Federation of Labor Convention.

Sec. 4. Section 1 of this article shall not prohibit newly organized districts from having representation of the International Executive Board.

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IX.

Duty os Officers.

Section 1. The President may preside over all International Conventions and meetings of the International Executive Board and sign all bills and official documents when satisfied of their correctness.

Sec. 2. He shall fill by appointment all vacancies occurring in any International Office, except International Board Members, who shall be elected by the District in which the vacancy occurs.

Sec. 3. He may suspend or remove any International Officer or appointed employe for insurbordination or just and sufficient cause.

Sec. 4. He may appoint a member whose duty shall be to collect and compile statistics on the production, distribution and consumption of coal and coke, freight rates, market conditions and any other matter that may be of benefit to the Organization. Said statistician shall make a report to the regular convention.

Sec. 5. He may appoint such organizers, field and office workers as may be necessary to conduct the affairs of the International Union.

Sec. 6. He may visit in person or appoint an International Office to visit any branch of the U. M. W. of A. or any other place, if in his judgment such writ will be of benefit to the U. M. W. of A.

Sec. 7. He shall interpret the meaning of the International Constitution, but his interpretation shall be subject to repeal by the International Executive Board.

306 Sec. 8. He shall semi-annually name the pass word, transmit it to the International Secretary-Treasurer, who in turn shall transmit it to the various District Secretary-Treasurers for transmission to the local unions entitled to the same.

Sec. 9. He shall appoint from among properly elected delegates the committees necessary to transact the work of International Conventions, and instruct the Resolutions, Constitution and Grievance Committees to meet at headquarters sufficiently early to enable them to be prepared to render at least a partial report on the first day the Convention convenes, but if a convention is to consider charges, regularly filed, against the President, the Grievance Committee shall be elected by the Convention.

Sec. 10. He shall appoint, subject to the approval of the International Executive Board, one or more competent Traveling Auditors, said appointees to be agreed upon by the Districts and International Union.

The International Organziation shall reimburse the different districts for one-half the salary and expense paid the Traveling Auditors for the time actually employed ab such. Said Traveling Auditors shall examine the accounts of all Local Unions at least once every year and assist in establishing a uniform system of bookkeeping in the Local Unions. Should such audits develop any irregularities, those responsible for the same shall be penalized as heretnafter provided.

The Traveling Auditors so appointed shall submit a correct report of their findings to the International, District and Sub-District officers and shall also furnish a copy of his
307 report to the Local Unions where the accounts have been audited.

This section shall not prevent proper International officers from at any time examining the accounts and records of any Local Union.

Sec. 11. He shall be empowered to grant district or territorial dispensation relating to initiation fees, when in his judgment such dispensations will add to the growth of or conserve the interests of the Organization.

Sec. 12. He shall devote all his time to the affairs of the Organization, executing the instructions of the International Executive Board and exercising general supervision over the field and office work of the International Union, and shall render a report of his stewardship to the regular International Convention.

Sec. 13. All appointments, suspensions and removals from office done by the President, shall be subject to the approval of the International Executive Board.

Sec. 14. The Vice-President shall work under the instructions of the President and the International Executive Board, and in event the presidency is vacated by resignation or removal from office, he shall succeed to that position. He also shall render a report to the regular Convention.

Sec. 15. The Secretary-Treasurer shall have charge of and preserve all books, documents and effects of the International office, except such records as properly belong to the office of the president.

Sec. 16. He shall record or cause to be recorded, the proceedings of all International Conventions and such meetings of the International Executive Board as the Board may desire recorded.

308 Sec. 17. He shall receive and receipt for all moneys due the International Union, pay all bills and current expenses, unless otherwise ordered by the President and shall keep copies of all important correspondence sent out and received by his office.

Sec. 18. He shall submit to the locals semi-annually a statement showing the salary and expenses of each officer and employe and detailing the receipt and disbursement of all money belonging to the International Union. The receipts from each District shall be compiled separately and totaled.

Sec. 19. He shall give a bond of $25,000 (which must be approved by the International Executive Board and deposited with the President) to insure a faithful discharge of his duties, but he shall not have more than $15,000 subject to his order at any time.

Sec. 20. He must deposit all funds in excess of $15,000 in banks giving interest bearing certificates of deposit, subject to the order of the International Executive Board.

Sec. 21. He shall send out to all Local Unions a monthly 'delinquent list' showing all local unions in bad standing with the International Union.

Sec. 22. He may, with the consent of the International Executive Board, employ such assistants as may be necessary to conduct the affairs of his office.

Sec. 23. He shall perform such other duties as are elsewhere herein provided and may be assigned him by the President or International Executive Board, and shall submit to the regular International Convention a detailed statement of the International Organization's financial affairs.

309 Sec. 24. The International Executive Board shall execute the instructions of International Conventions and between Conventions shall have full power to direct the workings of the Organization.

Sec. 25. The Board shall have power to levy and collect assessments when necessary but no assessment levied by the International Executive Board shall be collected for more than two months unless authorized by a referendum vote of the members.

Sec. 26. The Board shall hold in trust for the United Mine Workers of America all money deposited by the Secretary-Treasurer in the name of the Executive Board, but under no

circumstances shall said money be drawn upon except upon the written order of two-thirds of the members of the Board.

Sec. 27. The Board shall have power between Conventions, by a two-third vote, to recommend the calling of a general strike, but under no circumstances shall it call such a strike until approved by a referendum vote of the members.

Sec. 28. Questions coming before the Board may be decided by a unit vote of its members, but any member may demand a roll call vote on any question, and each member shall have one vote, and one additional vote for each 2,000 members, or a majority fraction thereof, in good standing, he represents. Where a unit vote is taken, the three resident officers shall be entitled to vote. Where a roll call vote is taken, they shall not have that right unless a tie vote is cast, then the President shall cast the deciding vote.

Sec. 29. The President, Vice-President and Secretary Treasurer shall be members of the Board by virtue of their positions.

310 Sec. 30. The Board shall be convened upon the order of the President, or by the Secretary-Treasurer at the request of a majority of the members thereof.

Sec. 31. When the Board is not in session, the individual members thereof shall be subject to the direction of the President.

Sec. 32. The auditors shall audit the books and accounts of the International Secretary-Treasurer semi-annually and make a report of the receipts and disbursements of his office and the Secretary-Treasurer shall have their report printed and a copy sent to each local union.

Sec. 33. The Auditors shall also act as the Credential Committee for International Conventions and shall meet at headquarters in sufficient time to enable them to make complete, printed reports in the morning of the first day's session of the Convention, of their audit and of all delegates entitled to seats in the Convention, said reports being printed in sufficient numbers to furnish each delegate with copies.

Sec. 34. The names of delegates whose seats are in contest shall be withheld from the committee's report until the contest is decided.

Sec. 35. The Tellers shall meet at headquarters and tabulate in accordance with the provisions of this Constitution, the votes cast for International Officers by Local Unions that

have complied with the valid laws of all branches of the Organization.

Sec. 36. The votes of each District shall be tabulated separately and consevutively, and the votes of each Local Union within each district shall be tabulated separately and
311 consecutively, the entire totals given and the complete report printed and sent out to the local unions by the International Tellers not later than January 15th of each election year.

Sec. 37. The Tellers shall decide the legality of the vote of any Local Union and their report submitted to the Local Unions shall be an official announcement of the election of the respective offices of the candidates receiving a plurality of legal votes as shown on the report, but should they for any reason refuse to tabulate the vote of any Local, their reason must in every instance be shown on their report submitted to the Local Unions and all contests growing out of the report shall be filed with the International Executive Board, which body shall have authority to decide the contest.

Sec. 38. Delegates to the A. F. of L. Convention shall represent the United Mine Workers of America in Conventions of the American Federation of Labor and shall render a report to the regular International Convention succeeding the Convention of the A. F. of L. which they last attended.

Sec. 39. The President, Vice-President and Secretary-Treasurer shall have their reports prepared, printed and ready for distribution on the first day the convention convenes.

Article X.

Officers Salaries.

Section 1. The salary of the President shall be $4,000. per annum; Vice-President $3,300 per annum; Secretary-Treasurer, $3,300 per annum; editor of the official Journal, $2,000 per annum; International Executive Board Members, $125.00 per month when employed; Tellers, Auditors and de-
312 legates to the A. F. L. Conventions $5.00 per day when employed. Each of the above mentioned officers and Editor shall receive, in addition to their salaries, all legitimate expenses while employed by the Organization away from their places of residence.

Sec. 2. The salaries of other employes shall be fixed by the International Executive Board.

Article XI.

Nomination and Election of Officers.

Section 1. The President, Vice-President, Secretary-Treasurer, Auditors, Tellers and Delegates to the American Federation of Labor Conventions shall be elected by a referendum vote of the members, except as elsewhere herein provided, the candidates for the respective positions receiving a plurality of legal votes cast, shall be declared elected, except as restricted by sections 1 and 2 of Article VIII.

Sec. 2. The next election of International Officers shall be held on the second Tuesday in December 1914, and the officers elected shall assume their duties beginning April 1st following their election and shall serve for a term of two years thereafter.

Sec. 3. All members in good standing in all branches of the Organization on December 1st of each election year, shall be entitled to vote.

Sec. 4. Each district and Sub-District Secretary-Treasurer must forward by registered mail to the International Tellers care of the International Secretary-Treasurer, not later than December 15th of each election year, a statement
giving the numbers of all local unions in bad standing
313 with their respective branches also giving the reasons
for the locals being in such status. If it is claimed a violation of a District or Sub-District Constitution is responsible for the Local's delinquency, the section alleged to have been violated must be quoted in the statement to the Tellers. In the event the Tellers do not receive such a statement, they shall assume the locals are in good standing with their District and Sub-District Organizations.

Sec. 5. The International Secretary-Treasurer shall prepare nomination blanks and send them to the Local Unions not later than twenty weeks before the date of election and the local Recording Secretary shall fill in the names of the members nominated by the Local Union for the various offices and forward the same to reach the International Secretary-Treasurer's office not later than fifteen weeks before the date of election.

Sec. 6. The International Secretary-Treasurer shall within ten days thereafter notify all members who have been

nominated and ask if they are candidates, but no person shall be notified or be a candidate who has not been nominated by five or more Local Unions.

Sec. 7. Any nominee notified in accordance with Section 6 of this article who desires to become a candidate must have his official notice attested by the officers of his Local Union and return said notice to the International Secretary-Treasurer at once.

Sec. 8. No nominee filing his acceptance with the International Secretary-Treasurer shall be allowed to withdraw his name.

314 Sec. 9. The International Secretary-Treasurer shall prepare ballots giving the names and place of residence of those accepting nominations, also showing the positions for which the various nominees are candidates and forward them to the Local Unions in sufficient numbers to supply each member not later than four weeks prior to the date of election. Two 'Tally Sheets', one 'Return Sheet' and one envelope for 'Return Sheet' must accompany the ballots sent each local union.

Sec. 10. Local Recording Secretaries must notify their members by posting notices and otherwise, one week prior to the dates set for the nomination and election of International officers.

Sec. 11. Each Local Union shall designate, at a regular meeting of the local, where its election shall be held and the place so designated shall be the official voting place of such Local Union, and under no circumstances shall the votes of any local be tabulated in any place other than the place designated by the Local Union, and no member shall be allowed to interfere with the official Tellers during the tabulation.

Sec. 12. No member shall be allowed more than one vote for any candidate, nor shall the local Tellers record the vote of any member who is not present at the time the election is held, except officers, organizers and workers in the field away from home, whose votes shall be recorded if sent to the Secretaries of their respective Local Unions.

Sec. 13. Each Local Union shall elect from among its own members a committee of not less than three nor more than six, three of whom must be the local President, Financial and

Recording Secretaries, to act as local Tellers whose
315 duty shall be to supervise the election, and when requested instruct the members how to vote, and tabulate the votes cast by the members for International offices, and enter on the 'Return Sheet' furnished by the International Secretary-Treasurer for that purpose, the total number of votes cast for each candidate. The correctness of the 'Return Sheet' must be attested with the Local seal and signatures of the President and Recording Secretary of the Local Union.

Sec. 14. Should it be proved that more votes are recorded on the 'Return Sheet' than were actually cast by the members, the entire vote of the Local Union shall be thrown out by the International Tellers, and those responsible for the fraud shall be punished as hereinafter provided.

Sec. 15. After the votes have been tabulated and the 'Return Sheet' attested, it shall be turned over to the Recording Secretary, whose duty it shall be to see that the Return Sheet is properly attested, enclosed in a special envelope furnished by the International Secretary-Treasurer for that purpose, and forwarded at once by registered mail to the International Secretary-Treasurer's office. 'Return Sheets' reaching International Headquarters after January 1st shall not be tabulated by the International Tellers.

Sec. 16. The envelopes for 'Return Sheets' furnished the Local Unions must have the name and address of the International Secretary-Treasurer, and the following printed thereon:

Election Returns

From L. U. No. .....

District No. .....

316 It shall be the duty of the local Recording Secretary to insert the numbers of the local union and district in the blank spaces on the envelopes.

Sec. 17. When the Return Sheets reach the International Secretary-Treasurer's office, he shall examine the envelopes to see if they are intact, make a proper record of their receipt and deposit them unopened in a securely locked receptacle provided for that purpose.

Sec. 18. Before turning the 'Return Sheets' over to the International Tellers, the Secretary-Treasurer, with the Tellers, must check them with the record made upon their receipt,

and the Secretary-Treasurer shall take the Tellers' receipt for all 'Return Sheets' turned over to them.

Sec. 19. The International Secretary-Treasurer shall be absolute custodian of the 'Return Sheets' from the time they reach his office until turned over to the International Tellers and during the interims of tabulation.

Sec. 20. No member who is not a regular attendant of the meetings of his local union shall be allowed to act as a local Teller of International elections.

Note: The term 'regular attendant' shall mean a member who attends at least one-half of the meetings of his local union six months just previous to the election.

Sec. 21. The International Tellers shall not count the votes of any local union that has cast more votes than the number of members such local paid per capita tax on the National Union for the month preceding the one in which the election is held, unless a satisfactory explanation for so doing
317 accompanies the 'Return Sheet' of the local union so voting. Neither shall they count the votes of any local union that is not in good standing with all branches of the Organization or whose 'Return Sheet' is not attested as required by Section 13 of this article.

Sec. 22. All contests in connection with the vote of any local union must be filed with the International Tellers not later than ten days after the date of election, by some responsible and reputable member of the local union whose vote is contested.

Sec. 23. In case no plurality vote is cast for any of the candidates for some office, another election shall be held for that particular office.

Sec. 24. Local officers of all local unions shall be required to carefully preserve all ballots which have been cast for International officers by their respective local unions for a period of six months after the date of election.

Sec. 25. No member other than the local Tellers shall be allowed to loiter around the voting place or to interfere in any way with the election of any local union.

Sec. 26. Local Tellers shall be held personally responsible for any irregularities that may take place in their local unions during the election of International officers.

Sec. 27. That portion of Section 6 which requires candidates to have at least five nominations, shall not apply to International Board Members.

Sec. 28. Any Local officer or Teller failing to obey the laws regulating International elections, or any member or
318 members interfering with local officers or Tellers during the discharge of their duties in connection with International elections, or any member resorting to dishonest or questionable practices to secure the election or defeat of any candidate for International office, shall be tried by the International Executive Board and fined, suspended, or expelled, as the magnitude of the transgression may warrant.

Sec. 29. Upon the signed request of 5 per cent of the entire membership, the Secretary-Treasurer shall send out a petition to each local union for the recall of any International officer guilty of malefeasance. Said petition to accompany charges for which a recall is asked and defense of those charged.

If within thirty days after the petition is sent out, 30 per cent of the entire membership send a signed request to the Secretary-Treasurer, the International Executive Board shall call an election for the recall of any International officers so charged.

Said election to be held in accordance with the election laws of the International Union.

Article XII.

Conventions.

Section 1. The regular International Convention shall be held biennially on the third Tuesday in January at such place as may be determined by the preceding Convention.

Section 2. Representatives to the International Convention shall be elected directly from local unions they represent, and shall have one vote for one hundred members or
319 less, and one additional vote for each one hundred members or majority fraction thereof, but no delegate shall be allowed more than five votes.

Sec. 3. Representation shall be based upon the average membership of the local for the last three months upon which payment has been made, previous to the month in which the Convention is held.

Sec. 4. Local unions organized one year prior to the date for holding the Convention and having one hundred members or more in good standing, must be represented in the Convention or pay to the International Secretary-Treasurer a fine of $25.00 for each one hundred members in good standing in the local union, unless exonerated by the International Executive Board. This section shall not apply to local unions whose members have been idle for one month or more prior to the Convention on account of strikes, suspensions or closing of mines.

Sec. 5. Local unions of less than one hundred members may combine with similar local unions within a reasonable radius of each other in the same District, and elect delegates to represent them, but no delegates so elected shall be entitled to more than five votes in the Convntion.

Sec. 6. No local union shall be entitled to representation that is in arrears for per capita tax or assessment for two months preceding the month in which the Convention is held and which has not in every particular complied with the constitutions of the International union and of the District and Sub-District to which it is attached.

Sec. 7. Any local union becoming delinquent must comply with Section 18 of Article 14 and be in good standing
320 for four months previous to the month in which the Convention is held before it will be entitled to representation.

Sec. 8. All newly organized locals must be organized at least three months and have two months' per capita tax and all assessments paid prior to the month in which the Convention is held, before they will be entitled to representation, unless said new locals are composed of members from old locals in good standing at the time the new local was organized. The fact that a new local is composed of old members must be attested by the District Secretary.

Sec. 9. No person who is not a bona fide member of a local union employed in or around a coal mine, coal washer or coke oven or by the organization or who is not a regular attendant of the meetings of his local union shall be eligible to act as delegate. This section shall not apply to International, District or Sub-District officers.

Note: The term regular attendant shall mean a member who attends at least one-half of the meetings of his local union for six months just previous to the election of delegates If

transferred, members can show they attend the required number of meetings of the local union from which they transferred, Section 9 will not prevent their representing the local union to which they transfer.

Sec. 10. No appointed employe of the Organization shall be a delegate from any local union other than his own.

Sec. 11. Any member accepting a position other than that of a mine worker shall not be eligible to act as a delegate to any Sub-District or International Convention, or to
321 represent the United Mine Workers in a central body or State Federation of Labor Convention while holding such position, but accepting a position with the United Mine Workers or any other Affiliated Organization, shall not be construed as making a member ineligible to act as such.

Section 12. The International Secretary-Treasurer shall furnish the local unions with Credential blanks in duplicate, which must be attested as required on the blanks. The duplicate shall be retained by the delegate and the original forwarded to the International Secretary-Treasurer, and no credentials shall be accepted later than fifteen days prior to the date for convening the Convention.

Sec. 13. The Credential Committee shall not transfer votes to any delegate unless authorized by the local union to do so.

Sec. 14. Delegates to International Convention must be elected at official meetings of local unions afret the call for the Convention is received and has been read to the local union. The local Recording Secretary shall post notices, signed by himself and the local President, at the mine at least three days prior to such meetings, stating that delegates are to be elected on a certain date. Delegates must receive a majority vote of the members present at such meeting, and no meeting other than the one first advertised and called in accordance herewith shall be recognized as an official meeting for the election of delegates.

Sec. 15. Local officers failing to read the call for a Convention to their local union, and to post notices in ac-
322 cordance with Section 14 of this article, shall upon conviction be removed from office, and shall not thereafter be allowed to hold office in the Organization for a period of two years.

Sec. 16. When any delegate's credential is to be contested notice of such contest shall be sent to the International Sec-

retary-Treasurer not later than ten days prior to the date for convening the Convention; but any delegate whose credential is contested, may be unseated at any time during the Convention.

Sec. 17. All resolutions, grievances, and constitutional amendments to be considered by the Convention, shall be sent to the International Secretary-Treasurer, not less than ten days prior to the date set for the Convention, who will sort and distribute them among the chairmen of the various and proper committees.

Sec. 18. Resolutions bearing on different subjects should be written on separate papers.

Sec. 19. International Conventions shall not consider internal appeals or grievances unless they have been previously considered by the lower tribunals of the Organization.

Sec. 20. The International Organization shall pay the transportation of delegates to and from International Conventions on the following basis: Local unions of from ten to five hundred members shall be entitled transportation for one delegate and one additional delegate for each additional five hundred members or fraction thereof, provided such fraction is not less than twenty-five members. Where local unions combine, as provided in Section 5, they shall be entitled to transportation for one delegate for each five hundred
323 members or fraction thereof, provided such fraction is not less than twenty-five members. Where railroad certificates cannot be secured by delegates, they shall furnish receipts for fare paid.

Article XIII.

Special Conventions.

Section 1. Special International Conventions shall be called by the President when so instructed by the International Executive Board, or upon the request of five or more districts.

Sec. 2. Representation in and transportation to and from Special Conventions shall be upon the same basis as govern regular Conventions.

Sec. 3. Districts demanding a Special Convention must state the reason or reasons why such Convention is desired, and it shall be the duty of the President to state said reason or reasons in the Call for the Convention.

Sec. 4. Special Conventions shall not have authority to consider any matter other than that which is specifically stated in the Call for the Convention.

Article XIV

Local Unions.

Local Unions, How Formed, and Governed.

Section 1. Local unions shall be composed of ten or more workmen, skilled and unskilled, working in or around coal mines, coal washers or coke ovens, but seven members shall be a quorum for a local union.

Sec. 2. Mine managers, top foremen, operators' commissioners, persons engaged in the sale of intoxicating
324 liquors and members of the civic Federation or Boy Scout Movement, shall not be eligible for membership.

Sec. 3. No mine shall be under the jurisdiction of more than one local union neither shall separate locals be established for coal washer or coke oven employees, unless there is no local union having jurisdiction over some adjacent coal mine to which they can belong.

Sec. 4. The charter fee for local unions organized by salaried officers or organizations of the International, District or Sub-District unions, shall be $8.00, which shall entitle the Local organized to one character, one press seal, one ledger, one record book, one book of orders on treasury, one treasurer's receipt book, fifty International constitutions, fifty due cards, one manual, one gavel, one copy of the proceedings of the last International Convention and such other documents as the International Secretary-Treasurer may desire to send them.

Sec. 5. The charter fee for local unions organized by the local organizers shall be $15.00, $7.00 of which may be retained by the local organizer and the remaining $8.00 of which must be sent to the International Secretary-Treasurer.

Sec. 6. When a local union is organized, the Organizer must send a report and the charter fee to the International Secretary-Treasurer within one week or show valid cause for the delay.

Sec. 7. Unless a dispensation has been granted in accordance with Section 11 of Article 9, the initiation fee for practical miners shall be $10.00; inexperienced miners and top and

bottom men shall be subject to the laws of the District
325 where application for membership is made.

Sec. 8. The initiation fee for member's sons between fourteen and seventeen years of age, shall be $2.50.

Sec. 9. Any member wishing to attend school as a pupil, shall be granted leave of absence by his local union, and on returning to work in the mine shall be admitted to membership without the payment of initiation fee.

Sec. 10. Any member going to work in a non-union mine shall forfeit his membership and can be reinstated only by complying with the laws relating to such offense in the District where said offense is committed, unless such work is done with the consent of the President of the District where the non-union mine is located.

Sec. 11. Any member becoming three months in arrears for dues and assessments, unless officially exonerated from the payment of the same, shall forfeit his membership and can be reinstated only by paying an initiation fee in accordance with the laws of the District in which application for membership is made.

Sec. 12. The local dues to be paid by each member shall not be less than fifty cents per month, together with such assessments as may be levied by the different branches of the Organization.

Sec. 13. Every Local Union shall pay direct to the International Secretary-Treasurer a per capita tax of 25c per month per member and such additional assessments as may be levied by an International Convention, referendum vote of the members or in accordance with Section 25 of Article 9,
payment of per capita tax to be based upon the
326 amount of dues collected each month by the Local Union.

Sec. 14. Boys under sixteen years of age and descrepit or disabled members shall be known as half members and shall pay only half as much tax and assessment as full members.

Sec. 15. The Local Financial Secretary shall fill out and forward to the International and District Secretaries on or before the 25th of each month, a report of all members in good standing in the Local Union the previous month, together with all tax and assessment due the International and District Organizations for the previous month.

Sec. 16. In filling out the monthly reports, the Local Financial Secretary must report to the International Secretary on blanks furnished for that purpose, the amount of money paid and the number of members reported to the District, and to the District Secretary, the amount of money paid and the number of members reported to the International, and must sign a certificate showing the report is for the full number of members in good standing in the Local.

Sec. 17. When a Local Union has failed to report and pay as provided in Sections 15 and 16, by the end of the month, the International Secretary-Treasurer shall notify the local President and Recording Secretary of the fact and failing to receive a satisfactory response within ten days thereafter, shall suspend the Local from membership, and any Local so suspended shall be published on the delinquent list.

Sec. 18. Local Unions placed on the delinquent list shall not be reinstated until they have paid all arrearages
327 and a fine of $2.00 for each one hundred members, or fraction thereof, in the Local Union.

Sec. 19. Should it be provided that any Local Financial Secretary has failed to report monthly the full membership of his Local to the International and District Secretaries and to send in the full amount of per capita tax on the same number of members that has paid dues to the Local Union together with the full amount of assessment due the International and District Unions, the Local Union shall be suspended from all privileges and benefits until the deficiency is made good, and the officer responsible for such failure shall not be allowed to again hold office in the Organization for a period of two years.

Sec. 20. The word 'member' as it appears in Section 13 of this Article, shall include all persons from whom dues are collected, whether they have taken the obligation or not.

Sec. 21. When a mine is abandoned indefinitely and all the members of the Local Union having jurisdiction over it have gone to work elsewhere, the Local Recording Secretary must notify the District Secretary of the fact and the District Secretary must make application to the International Secretary-Treasurer for exoneration for the Local Union for each month the mine is idle.

Sec. 22. In all cases, except as provided in Section 21, where Local Unions desire exoneration from the payment of per capita tax or assessments, the request for exoneration

must be signed individually by the Local President and
328 the Financial and Recording Secretaries, but no Local shall be exonerated until the request is approved by the District and International Secretaries.

Sec. 23. No Local Union shall be exonerated from the payment of per capita tax or assessments unless the members have been idle for one month or more but it is understood that any member or members of a Local Union who have been idle one month or more may be exonerated from the payment of dues and assessments by the Local Union of which he or they are members, provided such member or members are idle through no fault of their own.

Sec. 24. When exoneration is granted, the request must be renewed each month and shall be a legal substitute for the report required by Section 15 of this Article.

Sec. 25. No Local Union shall be allowed, for any reason or purpose, to divide its funds among its members, nor make donations to strikes unless said strikes have been endorsed by the American Federation of Labor or an affiliated Organization. Any Local using its funds for other than legitimate purposes, shall be fined double the amount so used, the fine to be collected by the District and turned over to the International Secretary-Treasurer.

Sec. 26. Should any local Union for any cause disband the charter and all the moneys and supplies belonging thereto must be sent to the International Secretary-Treasurer by the Local officers thereof.

Sec. 27. All Local Unions must contribute to and comply with the valid laws of Sub-Districts, where such are organized.

329 Sec. 28. All Local Unions are requested to affiliate with State Federations of Labor and Central Bodies if such Federations are chartered by the American Federation of Labor.

Sec. 29. All Local Unions shall set aside one meeting each month for the discussion of agreements and constitutions.

Sec. 30. Local Union supplies shall be furnished by the International Union for such prices as may be determined by the International Executive Board.

Sec. 31. Local Financial Secretaries shall, upon request, furnish each member with a Due Card with the amount of dues

and assessments paid recorded thereon, which shall be the member's receipt for same.

Sec. 32. All Local officers shall be elected the last meeting in June of each year by a majority vote of the members present, and shall serve until their successors are elected and qualified.

Sec. 33. The date of Local elections for Local officers, nine committeemen and check weighmen must be generally advertised among the members at least one week previous to the date of election.

Sec. 34. No person shall be eligible to act as a Local officer who has not been a member of the Local Union represented at least six months. This section is not intended to apply to newly organized Locals.

Sec. 35. No pershon shall hold two offices in a Local Union at the same time. This section shall not apply to nine committeemen or check weighmen.

Sec. 36. Only members who contribute to the support
330 of check weighmen shall have a right to vote for their election.

Sec. 37. Check weighmen must be members of the United Mine Workers of America six months previous to their election and shall keep a record of all men employed in and around the mine and perform such other duties as may be assigned them by the men who employ them. This section shall not apply to newly organized Locals.

Sec. 38. All Local officers entrusted with the finances of the Organization must give a bond to insure a faithful performance of their duty, the amount of said bond to be determined by the Local Union. When possible, said bond must be secured from a reputable surety company.

Sec. 39. The Local seal shall remain in the custody of the Local Recording Secretary and that officer shall be responsible for any misuse of the same.

Sec. 40. It shall be the duty of every member to see that his Local Union is in good standing at all times, and any member failing to report to the International Office any delinquency on the part of his Local Union, must suffer any penalty applied to the Local Union for such delinquency.

Sec. 41. All Local Unions shall subscribe annually for one copy of the official Journal, pay for it in advance, and Re-

cording Secretaries must examine every issue and read all official circulars therein to the members of his Local Union.

Sec. 42. Local Unions shall appoint label committees who shall act according to the directions of the Local in authority, in encouraging the purchase of goods bearing the union
331 label.

Article XV.

Transfer Cards.

Section 1. All Transfer cards must be purchased from the International Secretary-Treasurer and shall be made in book form with two stubs attached, the books to be numbered, and each card in each book to be numbered consecutively and to bear the number of the book; the stubs to be printed in conformity with the body of the card. The card and inside stub shall be filled out by the Financial Secretary and certified to by the President and Recording Secretary of the Local Union issuing the card. The inside stub must be retained by the Local Union issuing the card for future reference. The outside stub must accompany the body of the card and must be immediately filled out by the Recording Secretary of the Local Union where the card is deposited and returned by him to the Recording Secretary of the Local Union that issued the card. Recording Secretaries failing to return stubs within five days after their receipt shall be fined five dollars.

Sec. 2. The form of Transfer Card in present use, facsimile of which follows this section, shall be continued as the official transfer card of the United Mine Workers of America, which is as follows:

(Fac-Simile Transfer Card)

Sec. 3. The Transfer Card must show that the member receiving it has paid all obligations up to and including the month in which it was issued, also at what class of labor he was employed.

Sec. 4. No Local Union placed on the delinquent list or that is in bad standing with any branch of the Organiza-
332 tion, shall have authority to issue Transfer Cards until they have been reinstated to good standing.

Sec. 5. Local officers must examine the monthly 'Delinquent Statement' sent out by the International Secretary-Treasurer and shall not receive any Transfer Card issued by Local Unions appearing thereon.

Sec. 6. The International President shall have authority to restrain, for reason, or to grant any District the authority to restrain, for reason, any Local Union from issuing Transfer Cards and Local Unions receiving official notice that any Local Union has been so restrained shall not receive any Transfer Card issued by such Local.

Sec. 7. Transfer Cards issued in violation of Sections 3, 4, and 6 of this Article, will be invalid, and Local officers responsible for their issuance shall be fined $10.00 for each card so issued and permanently removed from office; or any Local officer accepting a Transfer Card in violation of Sections 5 and 6 of this Article shall be fined $10.00 for each card so accepted and permanently removed from office by the International Executive Board; and any Local Union refusing to enforce the above penalties when applied, shall be placed on the delinquent list and can be reinstated only in accordance with Section 18 of Article 14.

Sec. 8. When a person who has not been a member of the organization three months or more secures a Transfer Card from a Local Union in a District where a dispensation has been granted, said Transfer Card shall not be accepted by any Local in a different District unless the holder agrees to
333 pay the difference between the initiation fee already paid and the initiation fee of the District where he desires to deposit his card.

Sec. 9. Any member depositing a Transfer Card must pay all arrearages due on the card when deposited and shall be subject to the laws of the District having jurisdiction over the Local Union in which the card is deposited, but no District shall have authority to enact laws prohibiting the acceptance of valid Transfer Cards by any of the Local Unions within its jurisdiction.

Sec. 10. Any Transfer Card that is lapsed for a period of three months shall be invalid and shall not admit the holder to membership in any Local Union.

Sec. 11. Any member withdrawing his Transfer Card from a Local shall be known as a member of the Local issuing the card until it is deposited with some other Local or until the card is lapsed.

Sec. 12. No member holding a Transfer Card shall be entitled to strike benefits (where such are paid) from the Local Union issuing the card, until such card has been re-

deposited with said Local, and then only from the date on which the card was re-deposited.

Sec. 13. Due Cards shall not admit any member to membership from one Local to another. Such transfer must be made by Transfer Card, and any member in good standing shall be entitled to a Transfer Card, from his Local Union upon request, except as restricted by Sections 4 and 6 of this Article.

Sec. 14. To protect the membership of members residing where no Local Union is established, the International,
334 District or Sub-District Secretaries shall upon presentation accept Transfer Cards and dues and assessments from such members, but no such Secretary shall accept Transfer Cards, dues or assessments from members having access to a Local Union.

Sec. 15. The Local Financial and Recording Secretaries shall keep a record of all Transfer Cards bought, issued and received by their Local Unions for inspection by the Local and Traveling Auditors.

Sec. 16. Any member of the organization found guilty of trafficking in or abusing the use of the Transfer Card shall, when possible, be prosecuted in the civil courts and shall in every instance be permanently expelled by the International Executive Board.

Sec. 17. No legal holder of a valid Transfer Card, who has complied with Sections 8 and 9 of this Article, shall for any reason be debarred from membership in any Local Union or hindered from securing employment in any mine under the jurisdiction of the United Mine Workers of America. Violation of this cause shall be prosecuted under Section 2 of Article VI.

Sec. 18. Transfer cards issued by the Western Federation of Miners, the International Mining Congress and miners unions in Australia and New Zealand shall be accepted by the United Mine Workers subject to the same provisions governing the acceptance of United Mine Workers' cards.

Sec. 19. Transfer Cards of the Provincial Workmen's Association shall not be accepted.

335 **Article XVI.**

Strikes.

Section 1. No District shall be permitted to engage in a strike involving all or a major portion of its members, with-

out the sanction of an International Convention or the International Executive Board.

Sec. 2. Districts may order Local Strikes within their respective Districts on their own responsibility, but where local strikers are to be financed by the International Union, they must be sanctioned by the International Executive Board.

Sec. 3. Strikes shall not be called in any unorganized field without the sanction of an International Convention or the International Executive Board, and on financial aid shall be furnished by the International Union for the support of any strike until after the strike has been in effect four weeks, unless otherwise decided by the International Executive Board.

Sec. 4. The International Executive Board shall decide the conditions upon which strikes may be financed by the International Union; determined the amount of relief to be paid per member involved, etc.

Sec. 5. When strikes are sanctioned and financed by the International Union, the International President may appoint, subject to the approval of the International Executive Board, a financial agent who shall assume responsibility for all international funds so expended, said financial agent to be bonded; amount of bond to be determined by the International Executive Board, and no bills shall be paid by the International Union unless contracted or authorized by said financial agent, the resident International Officers or the International Executive Board.

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Sec. 6. When strikes are financed by the International Union the International Secretary-Treasurer shall furnish each Local Union involved with report blanks on which all expenditures must be detailed as provided on the blanks, and the Recording Secretary shall fill out said blanks weekly; have the same attested by the Local President and Financial Secretary; attach the seal of the Local Union and forward one copy to the International Secretary-Treasurer; one copy to the financial agent in charge of the finances and retain one copy in the Local Union for future reference. Local Unions failing to comply with this section shall not receive financial relief from the International Union.

Sec. 7. The International Secretary-Treasurer shall devise a uniform system of accounting for the use of financial

agents handling strike funds for the International Union, and it shall be the duty of the traveling auditors employed in the District where the strike prevails, or such persons as may be authorized by the International President, to audit the accounts of the financial agent at least every quarter of the period of the strike, or as often as the International Secretary-Treasurer may consider an audit necessary, and a final audit must be made when the strike is ended, and the auditor making such audits shall file a report of each audit with the International Secretary-Treasurer, who in turn shall submit them to the membership in his financial report.

Sec. 8. Any member who leaves a locality where a strike is in progress, goes to work in another locality and re-
337 mains away one month or more, shall not be entitled to strike benefits if he returns to the strike zone while the strike is on.

Article XVII.

Organizers.

Section 1. Organizers Commissions must be signed by the International President and attested by the International Secretary-Treasurer.

Sec. 2. International Organizers shall work under the direction of the International President or the International Executive Board and shall have authority to visit any local Union within the jurisdiction of the United Mine Workers, when directed by the proper authority to do so.

Article XVIII.

Charges and Methods of Trials.

Section 1. When any officer of the Organization, other than Local, is charged with an alleged official offense against the Organization or any of its members, the charge must be lodged with the Executive Board of the branch of which he is an officer and the decision of said Executive Board shall close the case insofar as such tribunal is concerned, but should the accused or his accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal in authority and so on until a final decision is reached, as provided in Section 3 of Article 3.

Sec. 2. When any local officer or any member not an officer is accused of violating any of the Organization's laws or of any transgression against the Organization or any of its

officers or members, the charge must be first lodged
338 with and prosecuted before the Local Union of which the alleged offender is a member and the decision of the Local Union shall close the case insofar as that tribunal is concerned, but should the accused or his accuser be dissatisfied with the decision of the tribunal first trying the case, either shall have the right of appeal to the next highest tribunal and so on until a final decision is reached, as provided in Section 3 of Article 3.

Sec. 3. When Sub-District Conventions are in session, they shall be recognized as an intermediary trial tribunal between the Sub-District and District Executive Board, and District Conventions in session shall be recognized as an intermediary trial tribunal between the District and International Executive Board and International Conventions in session may assume the functions of the International Executive Board, but if it can be shown that any case prosecuted under this article has been unnecessarily delayed on account of awaiting the arrival of a Sub-District, District or International Convention, said Convention shall refuse to consider the case, and shall refer it back to the respective Executive Board without prejudice.

Sec. 4. When it is proved that either party to a case has wilfully failed to appear before the proper tribunal for a hearing, after receiving official notice to do so, the case shall be decided in favor of the disputant so appearing and no appeal shall be allowed, and if neither disputant appears, the case shall be closed by default.

Sec. 5. The tribunal first trying any officer or member for any offense against the Organization or any of its members except as elsewhere herein provided, shall have the
339 right to fix the penalty, for the offense, and if sustained compliance with the penalty so imposed will be the only basis upon which the offender can regain good standing in the Organization.

Sec. 6. The foregoing sections of this article shall not prohibit the enforcement of penalties as provided elsewhere in this Constitution. Neither shall they prohibit the use of the right of recall as provided by Section 29 of Article XI.

Article XIX.

Official Journal.

Section 1. The United Mine Workers' Journal, official organ of the Organization, shall be issued on Thursday of

each week from headquarters. It shall be a medium for circulating news of interest to the craft; shall publish from time to time the important transactions of the Organization, general mining and trade news, together with copies of official circular and financial reports, and other matters of general interest. It shall be non sectarian in religion, dignified in tone, and shall serve the political interest of our members and the general movement.

Sec. 2. The Editor shall have charge of all correspondence, reports or other matters of a literary character and shall oversee the mechanical work and superintend the make up of the paper. He may publish upon request the announcement of any candidate for office, but he shall not publish any article for or against any candidate for office in the Organization.

Sec. 3. The business management of the Journal shall be under the management of a person appointed by the President and he shall have charge of the circulation and advertising, but he shall not accept advertisements from any firm that is unfair to organized labor, or any other firm without first investigating such advertisement.

Sec. 4. The Manager must give a bond, the amount of said bond to be specified by and the bond approved by the International Executive Board.

Article XX.

Miscellaneous.

Section 1. Any officer or any member of any branch of the organization guilty of embezzlement of or misappropriating any of the funds of the Organization, shall be prosecuted by every means possible by the branch whose funds are embezzled or misappropriated, and shall not be allowed to hold any office in the Organization thereafter.

Sec. 2. Any officer of any branch of the Organization accepting a salaried political office other than that of a State Legislator, Member of Congress, Member of Provincial or Dominion Parliament, County Sheriff, or Member of State Board of Arbitration, Local School Board, City, Boroughs or Town Council or local Poor Boards, Member of Miners' Examining Boards, granting certificate of competency or member serving on Industrial Insurance Commissions, shall resign his office in the United Mine Workers immediately upon his acceptance of the same.

Sec. 3. Any member guilty of slandering or circulating or causing to be circulated false statements about any member of or any member circulating or causing to be circulated any statement wrongfully condemning any decision rendered by any officer of the Organization, shall upon conviction
341 be suspended from membership for a period of six months and shall not be eligible to hold office in any branch of the Organization for two years thereafter.

Sec. 4. Any officer or any employe of any branch of the Organization seen in public in a state of intoxication while on duty, shall upon conviction be at once removed from his position by the proper authority having jurisdiction over such officer or employe.

Sec. 5. All officers of all branches of the United Mine Workers of America must upon retiring from office, turn over to their successors all moneys, official records and documents, and all property belonging to the Organization that may be in their possession at the time of their retirement.

Sec. 6. Any member of the United Mine Workers of America who furnishes a complete or partial list of our membership to any person or persons, except to those whose official business requires them to have such a list shall be subject to a fine of ten dollars and be debarred from holding office in the Organization for a period of one year.

Sec. 7. When possible, all persons employed by our Organization in and around headquarters and the United Mine Workers' Journal shall be members of organized labor.

Sec. 8. Sick, accident and death benefit funds may be established by Districts, Sub-Districts or Local Unions if desired by two-thirds of the members of the respective bodies.

Sec. 9. This Constitution shall be in effect from April 1, 1914, until March 31, 1916, and can be amended only by a majority vote of the delegates attending the regular International Convention.

342 Burial Service.

The following burial service is adopted to be used at funerals of deceased members of the United Mine Workers of America.

Brother Workmen: We are assembled here today to pay a last sad tribute of love to our departed friend and brother. This solemn occasion speaks forcibly of our mortality. We can say with the Psalmist: 'What is man that thou are mind-

ful of him or the son of man that thou visiteth him, for man that is born of woman is full of trouble and sorrows. He cometh forth like a flower and is cut down. Our years of labor are brought to an end. Our dust shall return to the dust as it was, and our spirit to the God who gave it."

Again, brother workmen, we are reminded that we too are but mortal and will soon break the tenement of clay and depart for the hereafter, and it behooves each of us to follow a line of conduct that will bring about a closer friendship, one that is true to God and man.

All our beautiful surroundings tell us of God's greatness and goodness, of the universe of which we are children of His creation.

But why should we be sad and mournful, when God can give us consolation while living here on earth, for His promise is that we shall meet again in the realms above for the Word of God teaches us that we shall again meet after death.

And now, our brother workman, we pay the last sad rite and tribute of respect, the last one we can pay you in the world, placing on your grave these evergreens as a token of respect, that thy memory shall be with us always, though thou hast paid the debt and hast gone to the realm above:

343 And now to the family and friends of this, our deceased brother, we tender our heartfelt sympathy in this their sad hour of affliction, and bid them look to God for His tender mercies for He alone can give them consolation.

And now, fellow workman, we bid thee a tender and loving farewell.

Let us pray; And now may grace, mercy and peace from God the Father, Son and Holy Spirit rest and abide with you now and for-ever-more.

Amen."

"Now some questions have been asked you about districts and locals. Explain the nature and character and functions of district organizations?

A. Under our form of organization districts are given the right of self-government, the broadest automony.

Q. Do these districts have an organization of their own?

A. Each district has an organization of its own.

Q. Does it have district conventions?

A. Yes, sir.

Q. Do they elect district officers?
A. Yes, sir.
Q. Do they have a district constitution?
A. Yes, sir.
Q. Who elects the district officers?
A. The membership within the respective districts.
344 Q. What would be District No. 11, for instance?
A. All the bituminous section of Indiana.
Q. And does Ohio constitute one district?
A. Ohio constitutes one district.
Q. And what is District 21 composed of?
A. Oklahoma and Arkansas and Texas.
Q. Now in these various districts who elects the officers?
A. The membership within the respective district.
Q. Who makes, [adoptes] and changes from time to time, if these be changes, the constitution of the district organizations?
A. The [memsership] within the district.
Q. Now describe what a local union is?
A. A local union is composed of men, of mine workers, working at any particular mine or group of mines, as the circumstances may warrant.
Q. Do they have their own constitution and by-laws to govern themselves in their local unions?
A. Yes, sir.
Q. And do they have officers?
A. Yes, sir.
Q. Who makes and changes their constitution and who elects their officers?
A. The membership of the local union.
Q. Now is it not a fact that the only requirement in the organization and government of a district, or under it, of a local union, is that the constitution and laws of the local shall not conflict with the constitution and laws
345 of the district or of the International Union; and that the only limitation put upon the self-government of a district is that its constitution and policy shall not conflict with the International Union? Is that true?
A. That is true.
Q. Now the International Union, then, as I understand, consists of the aggregate of all the miners and members that are affiliated with the union?
A. Yes, sir; the International Union is made up of the local unions of the United Mine Workers of America.
Q. Now how do they give expression to their wants or policies—by conventions or referendum vote?

A. By both.
Q. How are the officers elected?
A. By referendum vote of the membership.
Q. How often do you hold conventions of the membership of the International Union? A. Each two years.
Q. Beginning with 1908 down to 1912 how often were conventions held by the International Union?
A. Annually.
Q. Where did they meet during those years in International Conventions—in Indianapolis?
A. Except once.
Q. Usually in the city of Indianapolis?
A. Usually in the city of Indianapolis.
Q. Where the officers of the International Union have their headquarters?
A. Yes, sir, where the headquarters are.
346 Q. Now how is that convention composed?
A. It is made up of delegates from local unions.
Q. Elected by the local unions of the United Mine Workers of America? A. Yes, sir.
Q. Have you been a member of or participated in any of the conventions of the International Union in the last few years? A. Yes, sir.
Q. Since when?
A. I have—I am sure I have attended every convention of the United Mine Workers held since 1900.
Q. Now among other functions performed at these conventions you have a scale committee, have you not?
A. Yes, sir.
Q. The convention has appointed a scale committee, is that true? A. Yes, sir.
Q. What is the purpose of the scale committee?
A. All resolutions introduced by delegates bearing upon the scale is referred to the scale committee, and the committee acts upon them and reports to the convention.
Q. How is their report generally known? Is there any particular term by which it is known in the affairs of the convention or union? Is it called the miners demands? The report of the scale committee is what? Is it the demand?
A. It is called in some instances the miners' demands, in others the scale committee's report.
Q. You were in the convention of 1912, were you not?
A. Yes, sir.
347 Q. Were you an officer of that convention?
A. No, I was not an officer.

Q. Were you a member of the scale committee or do you remember?

A. I can not recall whether I was or not."

Mr. Warrum: Now, I wish to introduce, in connection with the deposition of Mr. Green, defendants' Exhibit 2, that is the report of the scale committee for 1912, the miners' demands, and that may be considered read, if the court so directs.

The Court: Very well.

"The said paper so marked and so offered being as follows, to-wit:

Defendants' Exhibit No. 2.

Dep. of Green
W. S. G. Notary

Report of Scale Committee—1912.

Whereas, The ever increasing and already too high cost of living without a corresponding increase in the wages of our members is making it not only impossible for our people to keep pace with the improvements of their standard of living that modern civilization makes necessary, and which they should have, but is making increasingly hard and bitter the struggle to get even the barest necessities of life, and

Whereas, the invention of labor-saving machinery; the introduction of oil and gas as fuel; the utilization of electricity generated by our waterways and the prospective development of more and more of it, as well as the greater efficiency of modern organization and more highly skilled labor, are'
making necessary the long hours of labor on the part
348 of the workers, and the especially dangerous nature of
our calling, away from the light of day; isolated from all other human beings; surrounded by unknown and unknowable dangers, our health affected and our lives shortened by being compelled to inhale continually the deadly damp, poisonous gases and equally enervating and lung-befouling millions of particles of the always present dust and smoke, we believe that we are entitled to a substantial increase in our wages and that our work day should be minimized.

Miners' Demands.

1. That all coal be weighed before being screened and paid for on the mine run basis and that the readjustment of the prices be made on the basis of the actual percentage of screenings as compared with lump coal.

2. That we demand a flat 10 cents per ton increase as the basing points.

All dead work shall be paid for.

3. Twenty per cent increase on all dead work; deficient work, yardage and day labor.

4. Uniform work day and wage scale for all classes of outside and inside day labor.

5. A proper readjustment of the machine differential at the basing point of Illinois, Indiana, Ohio and Western Pennsylvania.

6. That a uniform day of seven hours at the working place for all classes of inside labor be made the basis of the above scale, based on present prices.

7. That five hours constitute a day's work on Saturday.

8. We demand weekly payments. The coal companies shall not be permitted to have more than two weeks'
349 wages held in their offices at any one time.

9. We demand that there shall be no limit to the amount of deductions made through the companies' offices for the miners' organization.

10. We demand that there shall be no discrimination by the coal companies in the employment of mine workers on account of creed, color or nationality, or because of activity in matters affecting the organization, and that every mine worker shall be given work in his turn when appliying for same.

11. We demand that all local inequalities and internal differences be referred to the district affected.

12. We demand that this contract shall be entered into for a period of two years, becoming effective April 1, 1912."

"Q. You have the original of the report as it was prepared at that time, have you?

A. No, we do not have the original. That was sent to the printer.

Q. Now this report appears in the proceedings of the Annual Convention of the International Union for 1912, which was among the books produced by you for the inspection of plaintiff's counsel at this hearing, and which they had identified by the reporter; is that true? A. That is correct.

Q. Now, I will ask you if you were in the—I believe you said you were in the convention of 1914?

A. Yes, sir."

350 Mr. Warrum: We also offer in evidence defendants' Exhibit 3, in connection with the cross examination of the witness Green, which is the scale report adopted by the convention in 1914, and it may be considered read, if the court so directs.

The Court: Very well.

(The paper so [offer] and received in evidence is in words and figures following:)

"Miners' Demands—1914.

First: That all coal be weighed before being screened and paid for on a mine run basis.

Second. That we demand a flat five cents per ton increase at the basing point.

Third. A ten per cent increase on all dead work, yardage and day labor.

Fourth. A uniform day and wage scale for all classes of outside and inside day labor.

Fifth. A proper readjustment of the machine differential at the basing point.

Sixth. That we demand a complete check-off for the miners' organization through the companies' office.

Seventh: That we demand that all local inequalities and internal differences be referred to the various districts affected for settlement.

Eighth. We demand that where the price or regulation of powder is made a contract provision that union-made power shall be furnished.

Ninth. That the miners work only one-half day on Saturday.

351 Tenth. That the company shall pay drivers for time from taking charge of stock until they, the company, receive the same.

Eleventh. We demand that our contract shall be in effect for two years."

Mr. Warrum: I am trying to save time by looking this over. We also offer defendants' Exhibit 4, in connection with the cross examination, which is the demands of the miners adopted by their convention, and given to the operators in their joint conference January 9th, 1912, and will ask that it be considered as read.

The Court: Very well.

(The paper referred to and offered in evidence is in words and figures following, to-wit:)

"Indianapolis, Indiana, Jan. 9, 1912.

To the Representatives of the Operators and Mining of Ohio, Western Pennsylvania, Illinois, Indiana and West Virginia:

Gentlemen: The wage contracts in practically all the bituminous coal producing states of the country, also in those of the anthracite region, will expire on April 1st.

We must recognize that the time is short in which to secure agreements for the future, and the situation such that the welfare of the operators and miners, as well as that of the general public, demands that some action be taken to try to arrive at conclusions that will obviate if possible a condition of affairs on April 1st of serious and far reaching effect.

With this object in view, and being actuated by a sincere desire to see wage contract negotiated in all the coal fields of our country, I have decided to issue a call for a joint
352 conference of the operators and miners of the above mentioned states; namely, Ohio, Western Pennsylvania, Illinois, Indiana and West Virginia, for the purpose of negotiating a wage scale to be effective commencing April 1st. Said conference to convene at Indianapolis, Claypool Hotel, Thursday, January 25th, 1912, 2:00 p. m.

Expressing the hope that this matter will be presented to your respective associations and that they will be represented at this meeting, I am,

Yours very truly,

JOHN P. WHITE,
President U. M. W. of A."

"Q. Now what occurred after the convention had adopted the report of the joint sale committee and indicated its miners' demands, with reference to having a conference in the

field that you call the competitive field? Was there a meeting in accordance with this invitation?

A There was a meeting in accordance with this invitation and a joint conference of miners and operators was held.

Q. How many of those joint conferences have you participated in in this Central Competitive Field?

A. I have participated to the best of my recollection in every joint conference of miners and operators in the Central Competitive Fields since 1900.

Q. Where would they meet pursuant to the notice and letters of invitation of this character?

A. A number of meetings were held in Indianapolis.

353 Q. In any other cities?

A. Cleveland and Columbus, Ohio, I think.

Q. Any other cities that you remember—Chicago?

A. Chicago.

Q. Philadelphia and Cincinnati?

A. Philadelphia and Mobile, Alabama.

Q. Cincinnati? A. Cincinnati.

Q. Atlantic City? A. No, we never got there.

Q. Did you ever meet in Philadelphia? A. Yes.

Q. Toledo? A. Yes.

Q. Now where would they meet, Mr. Green, with reference to buildings that they would meet in—the character of the place of meeting?

A. Usually in a hall provided for that purpose, or the assembly hall in a hotel.

Q. Who provided the hall?

A. Usually some representative of the miners' organization would arrange for it—some local or private persons.

Q. Who would pay the expenses incident to the hall?

A. Well, the meeting place was usually furnished by the city or the people or the committee.

Q. Now when you would meet in the hall or some large room or assembly room in a hotel, just describe how the meeting met. Did the operators sit on one side of the room and the miners on the other?

A. Yes, the operators would occupy one side of the meeting place and the miners on the other.

Q. Was that provided in the rules for joint conference meetings?

A. It was in some instances provided by specific action, and in others by custom.

354 Q. Who presided there? Who would preside at the meetings?

A. A chairman elected by the duly credited representatives.

Q. And did they have a secretary?

A. A secretary, yes, sir.

Q. Now, how were the miners' representatives elected for that conference?

A. They were selected by the miners' in their respective districts.

Q. At district meetings? A. At district meetings.

Q. And how were the representatives of the operators selected, if you know?

A. I am not informed as to their basis of representation.

Q. How many of the representatives of the miners would fit in a conference of that character, representing one district or one state, say Indiana?

A. Well, in the early days, all miners from different states and all the operators would participate in the preliminary meetings of the joint conference, and then they would enter into a general discussion of the subject matter before the Conference.

Q. And they would appoint a Scale Committee?

A. I am coming to that. Then each district represented in a joint conference would hold separate meetings and elect their scale committee to which the subject matter before—to which all matters before the House would be referred for consideration and action, with instructions that they report later to the open joint conference.

Q. Then in the first years of our experience and asso-
355 ciation and participation in these [conference], they would first meet at mass meeting of miners and all the operators that cared to attend? A. Yes, sir.

Q. And out of that organization there were various committees? A. Yes, sir.

Q. What is the system now, if you know, and when was the present system adopted, with reference to the selection of delegates representing the miners of each state in the field?

A. They had provided since 1912 for a meeting of representatives of the miners and operators of the four states,—that is, the meeting of a committee of miners and operators rather than a meeting of all miners and operators, as held prior to 1912.

Q. How many miners would represent the state of Illinois —two or four? A. Four, I think.

Q. And Indiana the same number?

A. The same number. That is four members and four alternates.

Q. And Ohio and western Pennsylvania have the same representation, is not that true? A. Yes, sir.

Q. And the operators had equal representations?

A. Yes, sir.

Q. If at any particular meeting it was reduced two, the miners would have two, the miners of each state would have two? A. Yes, sir.

Q. Where the miners had four the operators had four?

A. Yes, sir.

356 Q. That is correct? A. Yes, sir.

Q. What rules were adopted within your experience with reference to the character of the vote required to adopt any matter of importance or major matter?

A. All main or principal questions were required to be adopted by unanimous vote.

Q. If the operators of one state or part of the operators of one state, or the miners' representatives from one state or part of that state, refused to vote for any proposition on any main or principal question, it was lost; is that so?

A. Yes, sir.

Q. Now, after your meeting was organized, that is after the meeting of the Joint Scale Conference was organized, what did the miners do with reference to presenting their demands?

A. They would present their demands to the coal operators in a formal way.

Q. Were those demands the reports that you have testified to which had been previously adopted in the convention of the International Union of the report of the scale committee? A. Yes, sir.

Q. Now, following the presentation of the miners' demands, what did the operators do, in a general way? Did they present a counter proposal?

A. In a general way they would invariably reject the demands proposed by the miners and propose a counter proposition.

Q. These demands usually called for an increase in

357 wages and a change for what the miners deemed the betterment in the conditions of labor, the conditions surrounding the mines, sanitary and otherwise, and other requirements which the miners thought they were entitled to?

A. Yes; and in addition to that they tended to raise the standard of living among the mine workers.

Q. Now, what followed—debates?

A. And very heated debates in practically every instance.

Q. How long would these sessions last? Give a definite instance?

A. They would last from one week to three weeks, and then many times would adjourn to meet at a later date, at the same place or some other place.

Q. Now, each day would you meet while these sessions were going on? A. Yes, sir.

Q. Would the debates continue?

A. Yes, sir, from day to day.

Q. And the debates covered the different propositions involved in the miners' demands, did they? A. Yes, sir.

Q. And they were discussed from all possible angles; is that true? A. Yes, sir.

Q. The miners insisting on their demands and the operators protesting against acceding to them; is that the way?

A. Yes, sir. The miners would offer the best argument possible in support of their demands, and the operators would offer arguments in opposition to the acceptance of the demands.

Q. Now, did they ever adjourn without coming to any agreement at all?

358 A. Yes, sir; in a number of instances they adjourned sine die without reaching an agreement.

Q. What years would that be?

A. Well, one I have in mind is 1906; and later I think there were other times when the joint meting adjourned without reaching an agreement.

Q. Would they also adjourn subject to a later call and take the matter up again and wrestle further with it?

A. Yes, sir; they would take a recess.

Q. Do you remember any instances of that character?

A. Yes, sir; I recall a meeting in Philadelphia and then adjourning to meet in Chicago.

Q. Now, when they came to an agreement was that agreement reduced to writing?

A. It was reduced to writing and was in every instance, I think, tentatively agreed to, subject to approval by the members of the United Mine Workers of America.

Q. Now, since 1912, how has that approval by the United Mine Workers of America of the joint scale agreement, adopted in the competitive field been secured?

A. By refrendum vote of the members of our whole organization.

Q. Does that refer to a vote of the entire membership? It is, is it not?

A. The scale submitted for referendum vote in the bituminous field is to my recollection—has been to my recollection referred to the membership of our organization in the bituminous coal mining district, and the scale in the anthra-
359 cite coal mining districts, the scale effective in the anthracite coal districts, has been referred to membership in the anthracite coal districts for approval.

Q. Now, before 1912 how was this ratification secured?

A. By the delegates of the United Mine Workers of America in convention assembled.

Q. Would the convention that had adopted the report of the scale committee, the miners demands, as it is termed, continue their session until after the meeting of the joint scale committee for the competitive field was held, in order to ratify its agreement?

A. Yes, sir.

Q. Usually by way of an adjourned session, was it not?

A. Yes, sir.

Q. They were called together when the labors of the joint scale committee were finished in order to take up and dispose of the question of ratifying or repudiating that agreement? A. Yes, sir.

Q. And the agreement was not binding until it was ratified by the membership of the International Union before 1912, in convention assembled, and after 1912 by referendum vote? A. That is correct.

Q. Now you stated that the conclusion that was arrived at in the Joint Scale Conferences in the competitive field was reduced to writing and agreed upon subject to the approval of the Union? A. Yes, sir.

Mr. Warrum: I will ask the reporter to mark this pa-
360 per which I hand him "Defendant's Exhibit No. 5, for identification."

Mr. Warrum: We offer in evidence now, Defendants' Exhibit No. 5, in connection with the deposition of Mr. Green. I will ask that it be considered read.

The Court: Very well.

Said Exhibit No. 5, so offered in evidence, is in words and figures as follows, to-wit:

'Defendants' Exhibit No. 5,
Green.
W. S. G., Notary.
Agreement—1912

The United Mine Workers of America having voted to accept the agreement negotiated at Cleveland, the representatives of the miners and operators of the several states were called together as provided, and met in Indianapolis, Indiana, April 25th, 1912, and executed the following agreement, to-wit.

Interstate Agreement.

The following agreement, made and entered into this 30th day of March, 1912, covering the prices and conditions of mining in western Pennsylvania, Ohio, Indiana and Illinois, for the two years ending March 31, 1914, to-wit:

First. That the prices of mining be increased 5 cents per ton on inch and a quarter screened lump coal, pick mining in western Pennsylvania thin vein, the Hocking, the basing district of Ohio, and both block and bituminous district of Indiana; and three cents per ton on mine run coal, pick mining in the bituminous district of Indiana and Illinois.

361 Second. That price of machine mines be increased 4 cents per ton on screened lump coal in western Pennsylvania thin vein the Hocking, the basic district of Ohio; 4 cents per ton on screened lump coal in the block and bituminous district of Indiana and 3 cents per ton on mine run coal in the bituminous district of Indiana and Illinois.

Third: That internal differences be referred for adjustment to the various districts, affected, it being understood that [nthing] shall be done in district or subdistrict conventions that will increase the cost of production or reduce the earning capacity of the men.

Fourth. That the inside day wage scale shall be advanced 5.6 per cent. with the conditions of the Columbus Day Wage scale of 1898.

Fifth. That all narrow, dead work and room turning and outside day labor shall be paid a proportionate advance with the pick mining rate, viz: 5.26 per cent.

Sixth: That the screen hereby adopted for the state of Ohio, western Pennsylvania and the bituminous district of Indiana shall be uniform in size, 6 feet wide by 12 feet long, built of flat Akron shaped bar, of not less than 5/8 of an inch

surface, with one and one fourth inches between the bars, free from obstruction, and that such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

Seventh. That block coal district of Indiana may continue the use of the diamond bar screen, the screen to be 72 feet superficial area, of uniform size, and 1¼ inches be-
362 tween the bars, free from obstruction, and that such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

Eighth. The above scale is based on an eight hour day, as defined by the Columbus Day Wage Scale of 1898.

Ninth. That there shall be no discrimination by the coal companies in the employment of mine workers on account of creed, color or nationality, or because of activities in matters affecting the organization.

For United Mine Workers:

WESTERN PENNSYLVANIA.
FRANCIS FEEHAN,
VAN BITTNER,
ROBERT WOOD,
Ohio.

JOHN MOORE,
J. W. SAVAGE.
Indiana.

Bituminous—
W. D. VAN HORN,
CHARLES FOX,
LAWRENCE GARRIGUS.
GEORGE PHILLIPS.
Illinois.

J. H. WALKER,
DUNCAN McDONALD.

UNITED MINE WORKERS OF AMERICA:

363 by John P. White, President.
Edwin Perry, Secretary.

For Operators:
Western Pennsylvania.

GEORGE W. SCHLEUDERBERG,
W. W. KEEFER,
Ohio.

E. A. COLE,
C. E. MAURER,
Per M. D. Ratchford,
Indiana.

BITUMINOUS COAL OPERATORS ASSOCIATION,
Huge Shirkie, Vice President.
P. H. Penna, Secretary.
Illinois.

ILLINOIS COAL OPERATORS ASSOCIATION.
By H. N. Taylor, President.
F. C. Honnold, Secretary.

FIFTH and NINTH DISTRICT ASSOCIATION.
By R. W. Popiequet, President.
Frank F. Tirre, Secretary.
J. S. Kolsam, Chairman.

EDWIN PERRY, Secretary of Joint Conference."

Mr. Warrum: I will continue reading from the deposition of Mr. Green:

364 "Q. Now, is there any other or further authority conferred upon the representatives of the miners who meet the operators in the competitive field in joint state conference, or any direction or authority given by them by the Convention or by the Union, otherwise than in the report of the scale committee of the particular convention from which they went and to which they made their report?

A. No other authority conferred upon them except that conferred by the convention.

Q. Was there any resolution or motion, oral or written, undertaking to confer authority upon the representatives of the miners who met the operators in the central competitive field in the Joint Scale Comference, under taking to give them any other or further authority or directions except the re-

ports of the Joint Scale Committee, known as the miners demands?

A. No, no authority except that given by the Convention.

Q. And in each instance the representatives of the miners reported to the convention that had appointed them and given them their authority [—] their doing and the conclusions and tentative agreement with the operators of the Central competitive field for the approval of the Union, in convention assembled?

A. Either the convention or the referendum vote of the membership.

Q. Was there ever any agreement, oral or written, expressed or implied, between the representatives of the miners and the operators of the Central Competitive Field, meeting in their various Joint Scale Conferences in which you have participated from 1890 to the present time, in which they entered into any agreement or had any understanding other than specified and set out
365 in the joint scale agreement, signed by the representatives of the miners and the operators participating in those conferences, and reported to the Union for its approval, either by convention action or referendum vote?

A. There was not.

Q. Now, you have been asked [by] the Journal. What is the Miners' Journal?

A. It is the official publication of the United Mine Workers' Organization, published by authority and under the supervision of the International Executive Board.

Q. It is a newspaper is it not?

A. Yes, sir, a weekly newspaper.

Q. Intended to be published in the interest of the mining craft; is that right? A. Yes, sir.

Q. Similar to various other trade publications and Labor Union publications in the country? A. Yes, sir.

Q. I will ask you how many pages the Journal contains? When it was in this folio form it contained eight large folio pages, did it not, in its folio form? A. Yes, sir.

Q. And contained cartoons and news items, especially those of interest in the mining industry and to miners, editorials, contributions from members, contributions from others who are not members that were deemed by the editorial manager to be of interest, and comic paragraphs, adver-
366 tisements and other matters naturally pertaining to a newspaper; is that true or not?

A. That is true.

Q. Now, is it not a fact that the journals of practically all the Labor Unions are required to be taken by the member-

ship of the Union, or do you know? Do you know anything about other labor papers?

A. In quite a number of labor organizations the publications; that is, their official journals, are maintained on an assessed circulation.

Q. And that is on the membership, is it?

A. Yes, sir; each member pays an assessment.

Q. Do you require every member to be a subscriber or to pay for their journals?

A. No, sir, it is purely voluntary.

Q. They can take it or not take it?

A. They can take it or not.

Q. The editor is appointed by the president of the International Union, is he not? A. Yes, sir.

Q. And he is changed from time to time; is that true?

A. Yes, sir.

Q. And he is paid a salary? A. Yes, sir.

Q. And the regular rate of subscription is fixed in the paper—how much is it a year? A. One dollar per year.

Q. And the contributions and articles and news items
367 that appear in the Journal are those which are permitted to appear there by the management reposed in the editor, is that correct? A. By the editor, yes, sir.

Q. It is also used, as I understand it, as a means whereby official letters, messages and documents signed by the officers may be given publication; is that true? A. Yes, sir.

Q. In those instances such communications or messages or proclamations or orders are properly signed and so appear in the paper? A. Yes, sir.

Q. Signed by the officers? A. Yes, sir.

Q. Outside of that composition of the paper with reference to the contributions that are admitted, the news items that are admitted, the cartoons that appear, the advertisements and subjects of that kind are, within the management of the paper reposed in the editor, as I have said?

A. Yes, sir.

Q. You have been asked about a provision that was embodied in the preamble of the earlier constitution, and that is now in perhaps modified form contained in [carticle] two of the constitution, which purports to set out the object of the Union, especially with reference to the declaration that the Unions sought to secure by legislative enactment laws preventing the employment of Pinkerton detectives and armed guards and other armed forces except those which belong to the constabulary or militia of the state. Your Union has al-

ways stood for the abolition by the legislature of such
368 practices, has it not?

A. Yes, sir, it has been the belief and sentiment of the United Mine Workers that the employment of privately armed forces is a menace to mining communities and against sound public policy; that the protection of citizens and property is the function of the state, and the state governments, and cannot be delegated to private individuals.

Q. In some of the earlier constitutions, to which your attention was called by Mr. Drinker, references were made in the declaration in your preamble to the custom that prevailed in Ohio, and he called your attention to the fact that that portion has been dropped out of the later forms. Has Ohio enacted legislation along the line stated in this declaration?

A. My best recollection is that the Ohio Legislature enacted a—

Q. An anti-Pinkerton law?

A. Providing against the employment of Pinkertons.

Q. And other armed guards of that character, I think?

A. And other armed guards of that character.

Q. Were you a member of that legislature?

A. No, not of that legislature.

Q. You were a member of the Ohio legislature, were you not?

A. Yes, sir, I was a member of the Ohio senate for two terms.

Q. What years? A. 1911 to 1914."

(I will now skip over to page 472.)

Q. Do you know James Mullen?

A. I know him, yes, sir.

369 Q. He is dead? A. Yes, sir.

Q. Where did he live during the period which is covered by these accounts that have been referred to?

A. My understanding was that his home was at Midland, Arkansas.

Q. And if he charged a livery bill for getting to Midland, Arkansas, or getting away from Midland, traveling to Ft. Smith, or from Kansas City back to Midland, it does not indicate to you that he was engaged in any nefarious purpose, does it, in going to and from him home?

A. No, he was going to and from his home in Midland in discharging his duties as a member of the International Executive Board.

Q. He was a member of that Board?

A. He was a member of the International Executive Board for District No. 21.

Q. That embraces Texas, Oklahoma and Arkansas?
A. Yes, sir.
Q. How many mines are there in that district, approximately?
A. I could not even tell you approximately.
Q. Are there a hundred?
A. I am of the opinion there is more than a hundred.
Q. Reference has been made to expenses in connection with trips and hotel bills and telephones to and from certain towns, such as McAlester, Henryetta, Huntington, Coalgate, Hartshorne, Clarksville, Montana,—those are all towns in that district nearby which mines are located, are they not?
A. Yes, sir; they are all towns in District 21 near
370 which mining operations are conducted and near which we had local unions of the United Mine Workers of America.
Q. Was it within the ordinary course of Mr. Mullin's business to travel from one place to another from time to time and visit these mines as questions would arise?
A. Yes, sir.
Q. Calling for the exercise of his authority whatever he had; is that right? A. Yes, sir.
Q. Your attention has been called to the account of Mr. Moran, who went from Des Moines to Clarksville, Arkansas, and perhaps other places in Arkansas. There are mines at those places, are there not? A. Yes, sir.
Q. There were mines at Clarksville, were there not?
A. Yes, sir.
Q. And when K. C. Adams left Trinidad and went to Ft. Smith in June or July, 1914, as this account shows, do you know what he went for?
A. No, sir, I have no means of knowing.
Q. This suit began in September, 1914, did it not, Mr. Green? A. That is my recollection.
Q. You have been asked on direct examination with reference to the moving about of members of the Executive Board in that district since this suit was begun. Do you know whether they were down there looking after the interests of the Union which had been sued or whether they were there on other business—can you tell from looking at
371 these accounts?
A. I cannot tell from looking at the accounts as to what their business was."

The next is the redirect examination, which I presume Mr. Drinker would prefer to read himself.

Mr. Drinker: First, I would like to read a passage or two which Mr. Warrum omitted from the cross-examination, page 461. I think you did not read it, one question and answer:

"Q. How many of these joint conferences have you participated in in this Central Competitive Field?

"A. I have participated to the best of my recollection in every joint conference of miners and operators in the Central Competitive fields since 1900."

Mr. Warrum: I distinctly remember reading that.

Mr. Drinker: I am sorry I took your time, then, I thought you had omitted it. I beg your pardon.

If the Court please, I would now like to read two or three passages from the Constitution of the United Mine Workers of America:

"Article III.

Jurisdiction.

Section 1. The International Union shall be composed of workmen eligible for membership in the United Mine Workers of America, and may be divided into districts, sub-districts and local Unions.

Section 2. All districts, sub-districts and local Unions must be chartered by, and shall be under the jurisdiction of
372 and subject to the laws and rulings of the International Union."

"Article IV.

Districts.

Section 1. Districts may be formed with such number and territory as may be designated by the International officers and may adopt such laws for their government as do not conflict with the laws or rulings of the International Union or joint agreements."

"Article VI.

Local Unions.

Section 1. Local Unions may adopt such laws for their government as do not conflict with the laws or rulings of the International, district or sub-district Unions or joint agreement."

"Article IX.

Duty of Officers.

Section 3. He (the president) may suspend or remove any International officer or appointed employee for insubordination or just and sufficient cause.

Section 4. He may appoint a member whose duties shall be to collect and compile statistics on the production, distribution and consumption of coal and coke, freight rates, market conditions, and any other matter that may be of benefit to the organization. Said statistician shall make a report to the regular Convention.

Section 5. He may appoint such organizers, field and office workers as may be necessary to conduct the affairs of the International Union.

373 Section 7. He shall interpret the meaning of the International Constitution, but his interpretation shall be subject to repeal by the International Executive Board."

(Skip over to page 438).

"Article XIV.

Local Unions.

Secton 10. Any member going to work in a Non-Union mine shall forfeit his membership and can be reinstated only by complying with the laws relating to such offense in the district where such offense is committed, unless such work is done with the consent of the president of the district where the Non-Union mine is located."

Section 25. No local Union shall be allowed, for any reason or purpose, to divide its funds among its members, or make donations to strikes, unless said strike has been endorsed by the American Federation of Labor or an affiliated organization. Any local using its funds for other than legitimate purposes shall be fined double the amount so used, the fine to be collected by the district and turned over to the International Secretary-Treasurer.

Section 26. Should any local Union for any cause disband, the charter and all the moneys and supplies belonging thereto must be sent to the International Secretary Treasurer, by the local officers thereof."

(Now, a couple of questions and answers from the redirect examination, page 475):

"Q. Now, these agreements, this agreement of 1912 and
374 similar agreements as to which you have testified and as contained in these printed proceedings, were the results, were they, of the deliberation in those joint conferences which you have spoken of?

A. You are referring now to the proceedings of the joint conferences of miners and operators?

Q. Yes, sir.

A. Yes sir, they are the report of—they are the verbatim report of the arguments, discussions and propositions and what took place."

Mr Warrum: The cross-examination may be considered as read, with the permission of the Court, so we may refer to it, if we wish to later.

The Court: Very well.

"Recross Examination

By Mr. Henry Warrum:

Q. After the Joint Scale agreement is made in the Central Competitive Field and approved by the Convention or by a referendum vote of the Union, then other district or joint meetings are held throughout the United States; is that true?

A. Yes, sir.

Q. Based upon or using the agreement decided on by the competitive field and approved by the convention as the basis for the action of these various other districts that have their subsequent meeting; is that right? A. Yes, sir.

Q. Now, the pamphlets that he has shown you yester-
375 day and from which he has quoted or introduced notations referring to the "Check-off", were agreements made by the various districts or in the various districts by the representatives of the miners of that district and the operators of that district; is that true? A. Yes, sir.

Q. And not made by the Union at all? A. No, sir.

Q. They are essentially district agreements; is that correct? A. Yes, sir.

Q. Or joint district agreements?

A. They were district agreements—sub-district agreements.

Q. In some instances a sub-district would have its own special scale?

A. Most of the check-off clauses that he referred to yesterday were in sub-districts of Ohio, where—

Q. Now, how would they meet?

A. (Continuing) Where the miners and operators of that particular sub-district would meet and make that agreement.

Q. Now, how would they meet in the southwest field? How many districts or states would meet there for the purpose of negotiating their scale?

A. The Districts No. 14, 21 and 25 of the Southwestern Districts meet in joint conference.

Q. What states would those districts include?

A. Kansas, Missouri, Oklahoma, Arkansas and Texas.

Q. They usually met at Kansas City and negotiated
376 their scale agreement there?

A. Yes, sir. I think I must correct that. Texas meets separately.

Q. The operators and miners will meet separately although belonging to District No. 21?

A. Yes, sir, although they belong to District No. 21 they have separate meetings and do not participate in the joint conferences held at Kansas City of the other district.

Q. I will ask you in the last Southwestern Conference if Oklahoma did not withdraw from the joint state agreement—that is the Southwestern Conference—and insist upon negotiating its own scale agreement with the operators of Oklahoma?

A. I am not thoroughly informed regarding that and I cannot state from personal knowledge.

Q. Now, these check-offs that have been testified to are check-off dues to the Union?

A. They are dues for the Union and checked,—weighman funds where they have sick and burial benefit funds.

Q. In some districts operators and miners agree on the check-off; that is right, is it? A. Yes, sir.

Q. And in some the operators and miners do not agree on the check-off and there is no check-off provided for by the contract; that is true, is it not? A. That is true.

Q. That is true in the Pennsylvania anthracite field, is it not? A. Yes, sir.

377 Q. In some instances the agreement, as shown by the pamphlet introduced or used yesterday, the check-off is based upon a collective order of all the men at the mine and given to the mine owner authorizing him to make the check-off; is that true? A. Yes, sir.

Q. In other instances the agreement provides that the check-off shall only apply for each individual miner, separately and individually, [—] files his written consent to the check-off; is not that true? A. Yes, sir.

Q. And in some instances it is provided that the check-off may apply and if any miner refuses to file the necessary written consent it shall not be required of such miner; is not that true? A. That is correct.

Q. And it is all a matter of negotiations between the various districts and sub-districts and the operators in those districts as they meet in their conference? A. That is correct.

Q. Now, other funds are checked off by the operators, are they not? Blacksmithing is checked off to the miners in some instances, is it not? A. Blacksmithing.

Q. And the powder and the tools are checked off?

A. Yes, sir.

Q. And store bills? A. Yes, sir, and mine supplies.

Q. And other mine supplies?

378 A. Yes, sir.

Q. And store bills where they have company stores?

A. Yes, sir; and money for sick funds and burial funds established by the local Unions and district organizations."

Mr. Drinker: Plaintiffs now offer in evidence the deposition of JOHN P. WHITE, taken at the same place on the next day. I will ask Mr. Lucas to read from this deposition

Mr. Lucas: I will read the deposition of John P. White, taken at Indianapolis, Indiana, August 21st, 1917, before the same notary.

The Court: He was president of the Association?

Mr. Drinker: Yes, sir.

The Court: Omit the formal part.

Mr. Drinker: We are going to read about one tenth of it.

Mr. Lucas: (Reading)

"Q. Your full name is John P .White? A. Yes, sir.

Q. You are now president of the United Mine Workers of America? A. Yes, sir .

Q. How long have you occupied that position?

A. Six years and a half.

Q. Since the 1st of April, 1911? A. Yes, sir.

Q. And what position did you occupy before that?

A. President of the Iowa miners.

Q. You did not occupy any position before that in the United Mine Workers for the year before that—from 1910 to 1911?

379 A. Yes, sir.

Q. What position?

A. President of the Iowa miners.

Q. You were vice president of the United Mine Workers of America to April 1st, 1910, were you not?

A. I was immediately—up to the year 1910 I was president of the Iowa Mine Workers, the Iowa branch organization.

Q. During what period were you the vice president of the United Mine Workers? A. 1908-1909.

Q. And did you occupy any position prior to that?

A. Yes, sir.

Q. What position?

A. President of the Iowa miners.

Q. For how long?

A. I was president and secretary-treasurer for about twelve years.

Q. So you have occupied an office in the United Mine Workers since 1896?

A. Yes, sir; I have been there since about 20 years.

Q. Now, in the course of your position as president of the United Mine Workers of America you have general authority of the entire organization, have you not?

A. In my present position, yes, sir.

Q. Over the entire organization and all the officers?

A. Subject to the laws of the organization and the authority of the International Executive Board."

380 "Q. Mr. White, I am going to now ask you certain questions which relate—except as I will specify—to the period between the time when you became president of the organization in April, 1911, down to the date of the bringing of this suit in September, 1914, and this [questions] will all warrant a yes or [now] answer, and I am going to ask you, if you will be kind enough, to give such answer.

Mr. White, during the period I have specified, did you ever cause to be published in the United Mine Workers Journal any report or notice of the suspension or removal, or other discipline, of any officer or employee or member of the United Mine Workers of America on account of violence or injury to life or property in connection with labor disputes?"

Mr. Warrum: We want to renew our objection on the ground that under the opinion of the Supreme Court that does not throw any light upon the issues or tend to support any issues in this case.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

"A. No, sir.

Q. Was there ever any such publication during your administration made?

A. I have no knowledge of it. If you can make your question more specific—you will have to be more specific to get any direct answer out of me. You have got to define what you mean by those things. You are taking in lots of territory. If you are specific I may be able to enlighten you on the point.

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Q. Do you know of such publication having been made in the United Mine Workers Journal prior to your administration as president? A. I do not know of any.

Q. Did you ever cause to be published in the United Mine Workers Journal any report or notice of the discipline of any district or local branch of the United Mine Workers of America on account of such violence or injury to life or property?"

Mr. Warrum: The defendant separately makes the same objection to that, if the Court please.

The Court: Same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

"A. No, sir.

Q. Was there ever any such publication during your administration?

A. I do not know of any.

Q. Do you know of any such publication at any time prior to your administration? A. I could not say.

Q. Did you ever suspend or remove or otherwise discipline any International officer or employee on account of violence or injury to life or property in connection with labor disputes?"

Mr. Warrum: The Defendants separately make the same objection, if the Court please.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

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"A. On account of violence?

Q. Or injury to life or property?

A. No, sir.

Q. Did you ever take any such action as to any district or local officer on such account?

A. No, sir.

Q. Did you ever take any such action against any member of the Union on such account?

A. Never had any occasion to. Our members do not comment violence.

Q. You never did take any such action?

A. Not to my knowledge.

Q. Did you ever take any steps toward the forfeiture of the charter, or other discipline, of any district, or local branch of the Union on such account?"

Mr. Warrum: The same objection on behalf of the defendants.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

"A. No, sir.

Q. Do you know of any disciplinary action having been taken at any time by any officer of the International Union, against any International officer or employee or member of the Union or against any district or local officer or employee, or against any district or local branch, on account of violence or injury to life or property in labor disputes?"

Mr. Warrum: The same objection?

383 To which ruling and action of the court the defendants then and there duly excepted and still except.

"A. No, sir.

Q. During your administration was there ever brought before the International Executive Board any appeal from any discipline of any district or local officer or employee, or member [or] of any local branch, on account of violence or injury to life or property in the course of labor disputes?"

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

"A. No, sir, not to my knowledge.

Q. Do you know of any such appeal having come before the International Executive Board ever at any time prior to your administration?

A. I do not.

Q. Did you ever publish or give publicity to any notice of any kind to be circulated amongst the members of the United Mine Workers of America that such members or the officers or the local or district branches, would be subjected to discipline by the Union and by the officers of the Union if they participated in violence or in injury to property or persons in connection with labor disputes, such publication having been in writing?

A. I gave a notice warning our people against being intimidated by the coal operators—being instigated by the coal operators to commit violent acts and warning them to
384 keep within the law, in 1908 in Birmingham, Alabama. They were being goaded by gunmen and brutalized by gunmen paid by the coal company, to get them to commit acts of violence; and I warned them not to commit any overt act, but rather to subject themselves to all forms of brutality, submit to all forms of brutality rather than break the law.

Q. Is that in writing?

A. Yes, sir, I think so.

Q. Can you kindly produce it?

A. I think I could—the substance of it. The essence of it.

Q. I know you mean to answer the question, but I do not think you did, exactly, and I will ask the stenographer to read it to you again. I would like to have a direct answer.

The notary repeated the question.

Mr. Drinker: I will read question No. 42 again.

"Q. Did you ever publish or give publicity to any notice of any kind to be circulated [amonst] the members of the United Mine Workers of America that such members or the officers, or the local or district branches, would be subjected to discipline by the Union and by the officers of the Union if they participated in violence or in the injury to property or persons in connection with labor disputes, such publication having been in writing?

A. I do not know of any other occasion that I issued any notice on the subject, other than the one I mentioned, and I was not president of the organization at the time."

(I will now skip over to page 493, beginning with the answer:)

385 "A. And you asked me if I wrote a letter to the secretary of labor, Hon. William B. Wilson, and I answered in the affirmative. I wrote to Mr. Wilson acknowledging the

receipt of a copy of a letter from Mr. Franklin Bache, receiver of the Bache-Denman Coal Company.

Q. During what period?

A. I am going to give you the date. I will read you the letter.

Q. No, sir; I asked you the date, first.

A. November 4th, 1914. You asked me to produce this letter.

Q. Yes, sir, I asked you to produce it. Will you hand it to me now, I ask you? A. To retain?

Q. No, sir; just to look at. Is this letter in answer to one which you received?

A. Yes, sir.

Q. Will you hand me that? I ask you whether you intend to hand me this letter?

(The witness passes the letter to Mr. Drinker).

Q. Mr. White, will you kindly designate by dates and by persons to whom and from whom letters are written, those letters which you had produced in answer to my request to produce letters to and from you and the secretary of labor, William B. Wilson, in the fall of 1914, with reference to this controversy?

A. Well, I acknowledged the receipt of that letter as I have just stated, on November 4th, 1914, and the other letter to President Wilson was March 3rd.

Q. Will you designate the date of the letter from Sec-
386 retary Wilson to you in answer to which you wrote the letter of November 4th, which you have handed me?"

Mr. Warrum: The defendants would like to separately object to further inquiry along this line, on the ground that under the opinion of the Supreme Court the answers will tend to throw no light upon the issues in this case.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

"A. Well, I cannot say the date without examining the letter.

Q. The letter is there on the table before you?

A. The letter I got from Mr. Wilson is on November 2nd, and my reply shows that I acknowledged it on November 4th.

Q. What year? A. 1914.

Q. Did you have any further correspondence with Secretary of Labor Wilson in that connection, or do those two letters comprise the entire correspondence?

A. Well, I do not recall that I had further correspondence with Mr. Wilson.

Q. You had certain other letters in here with you which Mr. Grant has now. I understand that those have no relation to this controversy or to the call I made?

A. I understand it has no relation to the call. You asked me did I receive a letter from W. B. Wilson calling my attention to certain matters now in controversy, and I answered and told you that I thought probably I did, but I would
387 ascertain for you, and I have done so.

Q. Did the letter of Secretary of Labor Wilson dated November 2nd, 1914, contain any enclosure?

A. I am inclined to think it did.

Q. Have you got that there? A. I think so.

Q. Well, will you produce and hand to me for inspection the letter of November 2nd, 1914, from Secretary Wilson to you, together with the enclosure?

Was the enclosure that you received in the letter from W. B. Wilson, a copy of a letter purporting to have been written by Franklin Bache of the Bache-Denman Coal Company to W. B. Wilson, undertaking to state his side of the controversy in litigation in this suit, in this litigation that was then pending, written by Franklin Bache either to W. B. Wilson or the President of the United States?

A. I am inclined to think it was. I have not consulted the files since I wrote the reply.

Q. And that enclosure was simply the statement that Mr. Bache made, and which you decline to introduce as a part of your testimony—is that right? A. Yes, sir.

Q. And Mr. Wilson's letter to you was predicated upon the statement made by Mr. Bache in his letter?

A. Yes, sir.

Q. To which you responded in the letter which you have produced and offered to read?
388 A. He has got it.

Q. Of November 4th, 1914? A. Yes, sir.

By Mr. Drinker:

Q. And is the enclosure which you state was contained in Secretary Wilson's letter to you of November 2nd here, physically, in the room now?

A. I am inclined to think it is.

Q. Don't you know that it is?

A. Well, I have not examined it.

Q. Well, you brought it here as being that paper, did you not?

A. When the correspondence came in it was all intact there, and my reply to it. I suppose it is there; I have not examined it. I was only concerned about my reply to Mr. Wilson which you asked me about, asked my answer to.

Q. Will you kindly examine that enclosure now, and state whether it is the enclosure which was contained in Secretary Wilson's letter to you of November 2nd?

A. This is the document that accompanied the communication from W. B. Wilson, and which I answered on November 4th. It is a letter directed to the president by Mr. Bache, and a copy of it was forwarded to Mr W. B. Wilson and communicated to me, which I answered on November 4th, 1914.

Q. Now, will you hand me that letter of Secretary Wilson to you, together with the enclosure, for my inspection, pursuant to the call? A. No.

Q. You will not?

389 A. No, sir.

Mr. Drinker: I offer in evidence the letter from the Secretary of Labor, William B. Wilson, to Mr. John P. White, together with the enclosure which he has stated is in his hand at this time, pursuant to the call, together with the copy of his reply to Secretary of Labor Wilson dated November 4th—"

Mr. Warrum: If the court please, the defendants separately object to counsel for the plaintiffs, in the pretense of reading from the deposition, reading the record in which that deposition was transcribed, and reading offers and speeches made by counsel for plaintiffs in the former trial.

The Court: I understand that is what transpired at the taking of the deposition.

Mr. Drinker: It was. I will read it out of the original deposition. If it is not in the original deposition, I will be glad to leave it out.

Mr. Warrum: You will not find that statement "I now offer in evidence", and so forth, in the deposition.

Mr. Drinker: Let's see if you are right or not.

The Court: I supposed you were reading from the record as a matter of convenience.

Mr. Drinker: If it is not there Mr. Lucas should not have read it.

The Court: If it is not in the original deposition it can be stricken out.

Mr. Warrum: I have no objection to reading what is contained in the deposition, but counsel is reading state-
390 ments that were made when he read the deposition in the trial, just like I am making statements now.

The Court: That is not a part of the deposition, of course?

Mr. Drinker: I am sure my friend does not mean to accuse me of anything I do not think I am guilty of. In this case I happen to be right. We will read it from the original deposition. (Reading:)

"I offer in evidence letter from the Secretary of Labor, William B. Wilson to Mr. John P. White, together with the enclosure which he [he] has stated is in his hand at this time, pursuant to the call, together with a copy of his reply to Secretary of Labor Wilson, dated November 4th, 1914, which he also has in his hand, and ask the stenographer to mark them for identification and place them in the record; and if the parties are unwilling to have these original letters attached to the deposition, the stenographer will copy them into the record.

The Witness: There (handing same to the stenographer) is the letter to Mr. Wilson, to Mr. W. B. Wilson, acknowledging the receipt of his communication to me which I answered on November 4th, 1914.

I say I have offered now in evidence my reply to W. B. Wilson of November 4th, 1914.

The said letter produced by the witness being in words and figures following, to-wit:

'File 5, Misc.

November 4th, 1914.

Hon. W. B. Wilson,
391 Secretary of Labor,
Washington D. C.

Dear sir:

I have your favor of November 2nd—"

Mr. Warrum: If the court please, in order that we may properly preserve our objections, the defendants separately object to the introduction of this evidence. It does not prove anything, and it could not throw any possible light on the controversy, does not tend to support the plaintiff's contention as to any of the issues in this case, only confusing and embarrassing the record.

The Court: I apprehend it is not offered for the purpose of affecting the interest of anybody except the association of which Mr. White was president.

Mr. Drinker: And Mr. White himself.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

Mr. Lucas: (Reading)

"File 5. Misc.

November 4th, 1914.

Hon. W. B. Wilson,
Secretary of Labor,
Washington, D. C.

Dear Sir:

I have your favor of November 2nd, containing copy of letter from Mr. Franklin Bache, receiver of the Bache-
392 Denman Coal Company, Ft. Smith, Arkansas.

Replying thereto I desire to say that, as you might know, I shall always be found exercising my influence against such conditions as are alleged in this letter. Personally I know nothing of the situation complained of, but as president of the organization will be glad to co-operate in any way I can to prevent their recurrence.

Yours very truly,

President."

Mr. Warrum: Now, if the court please, that letter, of course, is a harmless letter, but it was written November 4th, 1914, long after the suit was instituted, by Mr. Franklin Bache, in pursuance of his own purposes. I move to strike the letter out.

The Court: Was it written after this action was instituted?

Mr. Warrum: Yes, your Honor. This action was instituted within a month after the battle of July 17th. It was instituted September 1st, 1914.

The Court: Of course, a communication written by the plaintiff in this case would be self-serving.

Mr. Warrum: He writes a letter to Mr. W. B. Wilson, and Mr. Wilson, like any other public official, sits down and writes a letter to Mr. John P. White. Mr. White answers the letter and says "I don't know anything about this, but I will be glad to co-operate."

The Court: As far as this letter is concerned, I will allow it to stand, but that does not let in all the other correspondence.

Mr. Drinker: No, sir.

393 To which ruling and action of the court the defendants then and there duly excepted and still except.

Mr. Lucas (Reading):

"Q. Do you refuse to hand to the stenographer the letter of Secretary Wilson dated November 2nd, together with the enclosure, to which letter you replied by your letter of November 4th, which you handed the stenographer and offered in evidence?

A. I refuse at this time to offer the letter of W. B. Wilson to me on November 2nd, containing copy of the letter written to the President of the United States under date of October 21st, from Franklin Bache.

Q. Secretary Wilson's letter of November 2nd, to which you have referred is a complete letter itself, is it not, and Mr. Bache's letter accompanying it is a separate letter, is it not?

A. Yes, sir; I so stated in my answer.

Q. I ask you now to give the stenographer for identification and inclusion in this deposition that letter of Secretary Wilson to you of November 2nd, with the enclosure that that letter states was included in it; and you refuse to do so?"

Mr. Warrum: If the court please, in view of what your Honor had just ruled—

The Court: It would be hearsay and self-serving by Bache. Anything stated by White might be admissible.

Mr. Drinker: It is not necessary to read any more. We may want to offer the other letters after we find out more about what Mr. White knew about that.

Mr. Warrum: The witness further testified:

394 "Now in regard to the circular issued in the Birmingham strike, you asked me to produce that. I have it here in my report in the proceedings of the 1909 convention, which has been marked by the notary Exhibit No. 29 F. I

produce it as a correct copy of the proclamation I issued at that time. I offer it for identification and will read it as a correct copy of the circular I issued. It is in the volume of convention proceedings marked 'Plaintiffs' Exhibit 29 F beginning on page 82 and continuing to near the bottom of page 84, and is as follows:

Mr. Warrum: Just mark on the book indicating where it begins and where it ends.

The Witness: I have done so."

The Court: Why is that of any concern in this case?

Mr. Warrum: I don't think any of it is competent, but I don't like to have the gentleman to be reading question after question that is entirely incompetent under the opinion of the Supreme Court, as to whether or not he ever advised any of them that they should not commit violence, and whether or not he ever discharged any of them because they did commit violence and whether or not he ever revoked any charters.

The Court: I understand, but in the end I do not think it affects the situation.

Mr. Warrum: We would be in a nice place to permit them to go on. We have to do the best we can with your Honor ruling as your Honor is.

The Court: Yes.

Mr. Warrum: I would like to read that.

395 The Court: Very well.

Mr. Warrum: It begins on Page 498. I am willing to consider it read in the record.

The Court: Very well.

Mr. Warrum: So we can refer to it.

The Court: Very well.

(Said circular is in words and figures following, to-wit:)

Birmingham, Alabama, August 19th, 1908.

To the Officers and Members of Local Unions, United Mine Workers of District No. 20,—Greeting:

We take this means to inform you of the condition of our strike at this time for the express purpose of keeping you in touch with the situation, finding it impossible to meet with you personally as often as we would like to do.

The condition of the strike at this time is very good and every day new numbers are being added and new local Unions organized, and at this time almost the entire working force of the mines is organized.

Our field workers are actively engaged in meeting with the local Unions and addressing meetings throughout the district wherever it is possible to do so. At no time in the history of Alabama mining has a strike ever manifested its effectiveness so completely as at present. The amount of coal being produced is of little consequence when taking into consideration the vast importance of this great industry in the state of Alabama. Your officers are well satisfied with this phase of the strike situation, and we advised that
396 our local Unions and members everywhere use their moral influence and co-operation with the field workers and officers in charge of this strike in every honorable and legal way that will extend its influence to those not yet organized. Nearly eighteen thousand men are now members of the United Mine Workers in District 20 and are standing loyally in the cause.

Everything seems to indicate that success will eventually and speedily crown your noble efforts, and it is safe to assume that no strike of such magnitude and importance will be of long duration, when we consider its effect upon the business and industry of the country.

International vice president John P. White has taken charge of the strike situation and everything is being done to vigorously extend, by all honorable and lawful means, the influence of our strike. In this he is supported by the full strength of the International organization.

In the conduct of a strike of such magnitude many exacting duties and vast responsibilities are imposed upon your officers, and they are all working dilligently and faithfully to meet every requirement: yet we find it necessary to call your attention to the fact that local Unions must refrain from having individual members of their organization continually coming to the district office with their minor complaints, which could be readily and easily adjusted through our field workers or by letter or telephone. If our local Unions and members are to receive the best service possible from those in charge, it is absolutely necessary that
397 this rule be adhered to; therefore in the future all local unions are requested to report their grievances officially through their proper offices, where it is possible for

them to do so, and should advise all their members to remain in their respective localities and use their moral and righteous influence to extend and perfect by lawful methods the work in their own communities.

Local Unions are hereby notified not to contract any bills placing the International organization under financial obligation without approval from headquarters. Members will not be permitted to transfer their membership from one locality to another during the strike or until further orders, except in rare cases, when it may be done, when it may be the means of uniting some man with his wife and family. Otherwise the practice of transfer must cease, for if it were tolerated, the strike woud lose its effectiveness.

Observe the Law.

For the past several days we have been passing through a crisis. Public sentiment has been running very high; the tone of the press inflammatory, creating wild excitement; denunciation of our cause has been heard on every hand; but now that calm has been generally restored and the excitement subsided, we take this opportunity to admonish and urge you to observe, as we know you will, every feature of the law and refrain from all kinds of lawlessness and violence. We are not unmindful of the fact that in strike times emissaries of our opponents mingle amongst you for the purpose of exciting you to commit some overt act, or to resort to violence, which can never be counseled or tolerated by
398 our organization or the [humbles] member of its ranks.

Violence and disorder is our worst enemy; peace and tranquility our best friend. We propose to conduct this strike on the highest plane possible. We ask, and hope we may receive, the endorsement of the public spirited citizens and lovers of fair play and justice, and in return we pledge ourselves to lend our influence and co-operation to the side of righteousness and the upholding of the law. Therefore, each and everyone of you are expressly cautioned to lend your active moral influence and support to this principle, and thus demonstrate that we have no sympathy with those who resort to violence and disorder. We realize that you are subjected to many indignities at diverse times and places and they are often provoked; but remember it is better to bear and endure for the time these inhuman practices than to commit one overt act that would endanger the peace and society or in any [—] jeopardize what seems to be so evident to us now,—the success for fair conditions of employment. We realize that your conduct and deportment throughout this entire strike,

as a whole, has been admirable, notwithstanding there has been a persistent effort at different places to link your organization with violence.

We propose to respect and uphold those charged with law enforcement, and should co-operate with every legitimate endeavor for its maintenance, and by doing this we can justly demand in return, the full protection of the law.

Your officers and organizations frown upon violence in any and every form, and will ever be found admonishing our members everywhere to so conduct themselves private-
399 vately and officially as to merit the confidence and esteem of all worthy citizens. Our position in this crisis should be conservative; our utterances temperat and our conduct peaceful and law abiding.

You will be kept fully advised from time to time of the progress of events. Your field workers will visit your localities, and you are expected to advise them in matters pertaining to any grievance that you might think you have.

We expect the local Unions to co-operate with us fully and have their members remain at home and permit the officers to do effective work in extending the power and influence of our cause.

While it is a very trying time, we are inspired of the splendid loyalty you have displayed in this contest, and we ask your fullest co-operation to the end that an equitable solution may be found for present conditions.

Fraternally yours,

JOHN P. WHITE,
Vice President U. M. W of A.

W. R. FAIRLEY,
International E. B. M.

J. R. KENNAMER,
President District No. 20.

J. L. CLEMO,
Secretary-Treasurer District No. 20."

Mr. Drinker: We now offer in evidence, from the United Mine Workers Journal of October 15th, 1914, page 5, column

1, the passage contained on page 505 of the record,
400 merely for the purpose of showing a statement of the ownership and management and operation of the United Mine Workers Journal published by the National Ex-executive [—] of the United Mine Workers of America.

Mr. Warrum: Are you stating the purpose or reading the entry? I would like to have an opportunity preserve our objection.

Mr. Drinker: All right. Do you want to object?

Mr. Warrum: Certainly, but you state it in such a way that I do not get a chance.

The defendants separately object to the introduction of the extract from the Mine Workers' Journal, as offered by plaintiffs' counsel, for the reason that under the opinion of the Supreme Court the statements in the Mine Workers Journal do not preclude the defendant's and do not [through] any light upon the issues or tend to support plaintiffs' contention upon any issues in this case.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

Mr. Drinker: We can consider it as read, beginning with the word "statement," near the middle of page 505.

The Court: Very well.

(Said statement is in words and figures following to-wit:

"Statement of the ownership, management, circulation, and so forth, of United Mine Workers Journal, published weekly at Indianapolis, Indiana, required by the act of August 24th, 1920.

Note: This statement is to be made in duplicate, both
401 copies to be delivered by the publisher to the post master, who will send one copy to the third assistant postmaster general (Division of classification), Washington, D. C., and retain the other in the files of the post office.

Editor—Editor Wallace, Indianapolis, Indiana.

Managing Editor—none.

Publisher—National Executive Board of the U. M. W. of A., Indianapolis, Indiana.

Business Manager—Joseph Poggiani, Indianapolis, Indiana.

Owners—United Mine Workers of America, Indianapolis, Indiana.

Known Bond Holders, mortgagees and other security holders, holding 1 per cent. or more of total amount of bonds, mortgages or other securities—none.

Joseph Poggiani, manager.

Sworn to and subscribed to before me this 25th day of September, 1914.

(Signed) DELOS S. ALIG, Notary Public.

My commission expires January 30th, 1915."

Mr. Drinker: We now offer from the report of John P. White, for the year 1914, contained on pages 72 and 73 of the proceedings of the convention of the U. M. W. of A., Volume I, 1914, being Exhibit 290, W. S. G. Notary. On page 506 of the record, headed "Local Unions and Membership. I am willing to consider this as read.

The Court: Very well.

(Said statement is in words and figures as following,
402 to-wit:)

"Local Unions and Membership.

During the last two years there have been 530 local unions organized, 191 in 1912, and 339 in 1913.

I herewith submit a table showing the average paid-up membership from the years 1890 to 1913, inclusive:

	1890	20,912	1902	175,367
	1891	17,044	1903	247,240
	1892	19,376	1904	251,006
737	1893	14,244	1905	264,950
	1894	17,628	1906	230,667
	1895	10,871	1907	260.740
	1896	9,617	1908	252,018
	1897	39,371	1909	265,274
	1898	32,092	1910	231,392
	1899	61,887	1911	256,256
	1900	115,321	1912	289,269
	1901	198,024	1913	277,682"

Mr. Drinker: Now, I offer from the report of the Secretary-Treasurer, William B. Wilson, of the United Mine Workers of Americt for the year 1906, found on pages 58 and 59 of the minutes of the National Convention for that year,

being exhibit 29 C, the bottom paragraph on page 58, for the purpose of showing the expenditures of the Union, on account of strike benefits during the preceding year, beginning with the words "The amount" and ending with the words "local unions".

Mr. Warrum: Defendants separately object to the offer of this extract from the report of Secretary Wilson, offered by plaintiff's counsel, for the reason that under the opinion
403 of the Supreme Court it does not throw any light on the issues in this case, and does not tend to sustain the plaintiffs' contention upon any issue in this case.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

Mr. Drinker: (Reading)

"The amount we have in our national treasury does not by any means show the full financial strength of our organization or its defensive power.

There is in the national treasury $389,546.40.

Reports from 20 of our 23 districts show in the district treasuries $1,536,078.03."

The Court: I don't see how the amount of money would have any bearing.

Mr. Warrum: Except to prejudice.

Mr. Drinker: It is to show the amount of money that was under the control of the national organization, and to show that the national organization had control of all of the funds.

The Court: That is a different thing. If they were worth millions, I don't see that it would affect the situation.

Mr. Drinker: It is merely to show what the International had in their treasury.

The Court: The objection will be sustained to the amount of money on hand.

To which ruling and action of the court the plaintiffs then and thereby excepted and still except.

404 Mr. Drinker: I don't care about the figures. I merely want to show they reported the amount in their treasury, as showing that they were all under the one control.

Mr. Warrum: This is what we have had to contend with all the way through. The figures would have nothing to do with it.

Mr. Drinker: It was in the other record without objection.

The Court: I don't think the amount of money on hand would be important.

Mr. Drinker: I offered this passage from page 509 of the old record.

The Court: Objection sustained.

To which ruling and action of the court the plaintiffs then and there duly excepted and still except.

(Which passage, from page 509 of the record, to which the objection was sustained by the court, is in words and figures as follows:)

"The amount we have in our national treasury does not by any means show the full financial strength of our organization or its defensive power.

There is in the national treasury $389,546.40.

Reports from 20 of our 23 districts show in the district treasuries $1,536,078.03.

Reports from 21 of our 31 sub-districts show in their treasuries $115,449.99.

Making a total in the treasuries of the various branches of our organization of $2,679,134.43.

405 **These figures would undoubtedly be materially increased if we had complete returns from the districts, subdistricts and local Union."**

Mr. Drinker: From page 512 of the old record, we now offer an extract from the address by John P. White, International president, to the special convention of the United Mine Workers of District 21, at Ft. Smith, Arkansas, on Monday, May 18, 19, 14, the passage in the middle of the page, as follows:

"We have within the last two years organized 530 new local unions of the United Mine Workers, and we have added 127,000 new members. We now number nearly 450,000 members, easily we could influence more than 500,000 men who mine coal in the United States."

Mr. Warrum: If your Honor please, I seem to be rather slow today. I don't function very rapidly, for some reason.

The Court: The ruling of the Supreme Court, as made by Mr. Justice Taft, was not that all of this evidence was incompetent, or should be excluded, but was that it has tended to show no connection of these parties with a conspiracy to create this loss.

Mr. Warrum: Yes.

The Court: Now, it is announced that there is other evidence, and that they will in a lawful way connect this incident with it, so it might be extremely dangerous to exclude this evidence, under this ruling of the Supreme Court.

Mr. Warrum: I think your Honor is right, and I think the solution of the difficulty would be to ask these gentlemen to do what might have already been done, to produce what is now attempted to be shown in connection with the re-
406 sponsibility of the International organization. The plaintiffs are entitled to produce their proof in their own way, of course, but with a ruling that involves such important matters as these they might well be asked in economy of time to produce that evidence now.

The Court: Counsel states they will in a lawful way connect this organization with this enterprise by other testimony. Of course, I can control the order, and might to the extent that you suggest, but I feel that in a matter as important as this it is well enough to let them proceed, and you have your record preserved.

Mr. Warrum: Your Honor commented just a moment ago as to the nature and effect of the decision of Justice Taft. The Supreme Court ruled upon this particular matter. It strikes me that is proper.

The Court: If the ruling had been that this evidence had no part in this case, on the ground that it was not competent, or other grounds, that might be true, but it simply says while it is there it does not prove anything. They say that they have evidence to produce in this trial to prove these facts. I see no way except to go on. I think I will let the ruling stand. To which ruling and action of the court the defendants then and there duly excepted and still except.

Mr. Drinker: Now, I have six more articles, and then I am through with this line for the present. I don't mean to

say I am entirely through with this line of examination, but there will not be much more at this time.

From the report of President Lewis, predecessor of Mr.
407 White, of the United Mine Workers of America, in 1910, page 102, headed "Jurisdiction", on the middle of page 104, Exhibit 29,-H 2, on pages 515, 516 and 517 of the record.

Mr. Warrum: The defendants separately make the same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants then and there duly excepted and still except.

Mr. Lucas: (Reading.)

"Jurisdiction.

When the United Mine Workers of America was formed it was understood that its object to organize all mine workers in America, and it was recognized to be a national organization. Later, the constitution was changed to make it an International Union, having jurisdiction over all districts, sub-districts and local Unions. The Constitution provides that the different branches of the organization shall be governed by the International organization known to us as the United Mine Workers of America.

Local Unions derive their existence and authority through the medium of charters issued from the International office of the United Mine Workers of America. This rule also applies to the authority conferred upon districts and sub-districts. This authority was conferred on the International organization by the representatives of the local union.

In the formation of district organizations, it is the local
unions within certain territory defined by the International
Executive Boards that have the right to organize dis-
408 tricts. Such districts when organized can enact laws for their government which are not in conflict with the International Constitution.

Sub-districts and Local Unions have authority to make laws for their government which are not in conflict with the International constitution.

The control and management of the United Mine Workers of America should rest with the membership and be kept under the control of the members as near as good management and effectiveness will permit.

Since I have been elected to serve you as president of the organization there is a growing disposition in some districts to ignore the authority of the International organization and the International officers. This sentiment has grown to such an extent that some members of the United Mine Workers have gone so far as to advocate district autonomy.

If it is the intention of the members of this organization to have district autonomy or to permit districts, sub-districts or local Unions to make any law they see fit and ignore the provisions of the International constitution, this convention should plainly define its attitude in favor of such a system. If we believe in an International organization in every sense that the term implies, this convention should make its position clear in order that there may be no misunderstanding on this question and no conflict of authority in directing the affairs of the United Mine Workers.

This question is an important one, not only to the mem-
409 bership of the organization, but it is important that we may understand our relation with the mine owners of the country when negotiating wage contracts, and the authority of the International organization to require the officers of districts, sub-districts or local Unions to comply with law embodied in the International constitution of the organization.

When the United Mine Workers were formed I was a believer in a national organization. I have never had any reason to change my opinion. As the executive officer of this organization I am willing to assume responsibility for any advice given to my associates or to any of the officers and members of the organization, providing that the officers and members are willing to accept the advice and carry it into effect. I am unwilling and will not be responsible for the conditions that may exist in any district as the result of a refusal of officers or members to comply with the laws of the organization and advice that may be given them.

I would recommend that this convention clearly define the authority of the International organization and all of its subordinate branches. This is necessary for the protection of the best interests of the membership."

410 Mr. Drinker: We offer from the United Mine Workers Journal of October 13th, 1910, page 4, column 2,

entitled "Editorial Page", the three paragraphs beginning "Membership of the United Mine Workers of America", as found on page 518 and 519, to the last paragraph on page 519.

Mr. Warrum: To which offer the defendants separately renew their objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Members of the United Mine Workers of America should keep in mind that they belong to an International organization, and its prestige for permanent good will always depend upon its International influence.

The founders of the United Mine Workers of America fully recognize the enormous work incident to the successful management of the union and the necessity of dividing the work and responsibility into different departments or divisions.

The International organization is divided into districts, sub-districts and Local Unions, all receiving their existence and authority from the International headquarters and all subordinate to International authority. This was done in order that there might be no conflict of authority in the adjustment of the various questions affecting the rights of the membership.

The Local Union is the most effective and influential division of the United Mine Workers in making the organization a success and power to protect the rights of its mem-
411 bers. The Local Union is the recruiting station, the place where the membership is taught the reasons why they should be active union men.

The sub-district is organized to include within its jurisdiction mines that have nearly like conditions in order that the sub-district officers may be able to adjust any disputes that arise and to that extent lighten the work, the burdens and responsibility of the district officers. Sub-districts when properly organized, officered and directed are a power in enforcing the terms of wage agreements.

The districts are organized to exercise jurisdiction over all mines within certain limited territory defined by the International Executive Board or by an International Convention if it so desires. The authority to define district lines is delegated to the International Executive Board for the reason that the Board Members would naturally investigate thor-

oughly the relation of one district with another and the necessity of certain mines being under the jurisdiction of certain districts. The District Organizations have certain authority delegated to them and they are likewise a power to promote and protect the welfare of the membership.

The International Organization exercises its authority over the districts, sub-districts and Local Unions and this authority is delegated to the International Union, not by the district or the sub-district, but by the representatives direct from the Local Union. The authority of the International Union is derived direct from the membership and the authority is delegated to the International Organization to divide the
412 various mining communities of the county into districts and sub-districts. The object of the International Union is to bring into closer relationship the entire membership of the country and through its officers to be able to advise and recommend to the membership what is to their best interests and to formulate such plans as necessary to carry into execution any policies that an International Convention may adopt.

An investigation of the jurisdiction and authority of the International Organization of the United Mine Workers, as well as its various sub-divisions, will convey to men's minds that the founders of the United Mine Workers had a very clear and keen conception of what was necessary in order that our organization would be successful in extending its influence, its power and its prestige over the entire mining industry of the country. The founders planned well when the United Mine Workers was organized. It will be for the membership of the organization to continue to carry into effect the plans upon which the organization was founded and to adopt such new policies as may bring a greater measure of success to the United Mine Workers organization."

Mr. Drinker: Another article from the proceedings of the convention of the United Mine Workers of America, being Exhibit 29m, 1912 proceedings, and the report of John P. White, on page 49, the bottom paragraph entitled "Records of President's Office", found on page 521.

Mr. Warrum: Now if the court please, the defendants renew their former objection to this, for the reasons heretofore given, and in addition, those three paragraphs state that
Mr. White, in 1912, made a report to the convention
413 that the files and books and papers had been taken away by the former president, Thomas Lewis. Does that

prove anything on earth except that Tom Lewis took the papers away with him? I have never been able to discover what it was offered for.

The Court: That was long before this occurrence?

Mr. Drinker: The significance which I think it has is, and we offer this for the purpose of showing that President White referred to the district as subordinate to the national organization.

The Court: That was read a moment ago.

Mr. Warrum: All of this evidence is for the purpose of getting the jury to determine these instruments different from what the Supreme Court has.

The Court: The fact that one of the officers took the books,—

Mr. Drinker: I don't care whether he took them or not, but I want to show that he referred to the district as subordinate to the national.

The Court: That was read a moment ago.

Mr. Drinker: This is another place where he did it, and I want to also show where the district refers to themselves as being subordinate to the national, merely to get their status.

Mr. Warrum: Merely to modify the construction that the Supreme Court has made on these instruments, which is as decisive as though it were a will or deed.

Mr. Drinker: I will read it into the record with the exception of the last paragraph.

Mr. Warrum: We renew our objection.

414 The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

(The paper referred to and offered in evidence is in words and figures following, to-wit:)

"Records of President's Office.

Upon taking charge of the office of President, I expected to find a complete file of all the important documents and official correspondence of preceding administrations. To my surprise and astonishment the official correspondence, type-

written records of the meetings of the International Executive Board, etc. were not in the office.

I do not think it should require any argument to convince the delegates of this convention that in harmony with the obligation your officers take, they are honor bound to surrender to their successors all books and other property in their possessions at the close of their official term. These records belong to the rank and file; they pay for the accumulation of these data and no one should remove them to the embarrassment of his successors and the detriment of the membership. In order that this condition of affairs may be overcome and the organization better protected, I would recommend that the laws be so changed as to make it mandatory upon the heads of the different departments to leave all official correspondence and records affecting the organization, and be required under penalty of expulsion from membership in the union to surrender them to their successors.

While I have been able to discharge the duties of this office without these documents, there have been times
415 when I would have appreciated it had I been in possession of the records of previous administrations and the official correspondence in many important cases that had been exchanged between the President and the subordinate branches."

Have you the district convention proceedings for 1916? That was one that was ordered to be produced. I will pass to another one while they are looking that up.

The Court: Very well.

Mr. Drinker: From the United Mine Workers Journal for July 27th, 1911; I have not the page, but it is found on page 3170 of the record in the other case. I don't mean we had progressed quite that far. It is headed "Official Notice".

Mr. Warrum: To this offer the defendants separately renew their objection on the ground that it does not tend to prove any issue in this case, utterly irrelevant and immaterial, and purports on its face to be an instrument taken from the Mine Workers Journal to show that certain locals had their charters revoked.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Drinker (Reading):

"Official Notice.

Indianapolis, Ind, July 25, 1911.

To Whom it May Concern—Greeting:

Pursuant to action of our International Executive Board at a meeting held in this city on June 26 to July 1, the President hereby revokes the charters of the following lo-
416 cal unions; 96 West Newton, Pa.; 260, Moon Runn, Pa.; 266, Venetia, Pa.; 410 Yohoghany, Pa.; 524 Carnegie, Pa.; 547, Reissing, Pa.; 725 Clif Mines, Pa.; 777 S. Brownsville, Pa.; 873, Brouhton, Pa.; 970 Avella, Pa.; 1015, McDonald, Pa.; 1046, Tyre, Pa.; 1188 Kaylor, Pa.; 1240, Presto, Pa.; 1346 Brouhton, Pa.; 1372 Shire Oaks, Pa.; 1447 W. Brownsville, Pa.; 1712 Rodfield, Pa.; 1809 Willock, Pa.; 1891 Epton, Pa.; 1898 Imperial, Pa.; 1917 Bridgeville, Pa.; 2026, Wesland, Pa.; 2048 Carnegie, Pa.; 2050 McDonald, Pa.; 2107 Avella, Pa.; 2146, Loupnex, Pa.; 2500 Large, Pa.

The above local unions have failed to comply with the previous instructions of the board, authorizing them to pay tax and assessment to Timothy Donovan, Secretary-Treasurer of District No. 5, Pennsylvania.

All local unions in District No. 5 are hereby cautioned against accepting transfer cards issued by said local unions. For a number of months the local unions in question have been in open rebellion against the authority of the International organization as well as the authority of the regular District organization, hence it becomes imperative, in order to enforce discipline and preserve the integrity of the organization, that such flagrant violations of our laws should not be permitted and the guilty parties allowed to go unpunished.

The so-called District No. 5 organization, of which Robert Gibbons is president, was not chartered by the authority of the International Executive Board and is not recognized by your organization and consequently has no standing,
417 and any and every act of said organization is illegal, a usurpation of power and a violation of the fundamental principles of our union.

From the inception of the controversy in the Pittsburg District every opportunity has been given the Gibbons faction to present their grievances in the courts of the organization, which they have failed to do, but were disposed to bring about a more chaotic state of affairs by resorting to the civil courts to redress their wrongs, whether real or imaginary.

The joint contract relations between the Operators' Association and our organization are only recognized through the regular District No. 5 organization, of which Francis Feehan is president and Timothy Donovan is secretary-treasurer.

All local unions affiliated with the regular District No. 5 organization and the International union will govern themselves accordingly.

JOHN P. WHITE, President.
FRANK J. HAYES, Vice-President.
(Seal) EDWIN PERRY,
Secretary-Treasurer."

Mr. Drinker: From the proceedings of the convention at Ft. Smith, Arkansas, April 16th, 1916, District 21.

The Court: Now, that is the district that is the territory of Arkansas, Oklahoma and Texas.

Mr. Drinker: Yes, sir.

Mr. Warrum: This was not read before, and I assume we will have the right to just glance over it. If you will indicate outside of court hours, what you expect to read, we will be prepared so that you can read it instanter.

The defendants separately object to the offer for the
418 reason that it is immaterial, irrelevant, and does not throw any light on the issues in this case, and does not tend to support the plaintiffs' contention on any issue in this case, and it occurred long after the suit was brought.

Mr. Drinker: It is merely to show how they regarded themselves, as subordinate.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Drinker (reading): "Delegate McLachlin: Resolution No. 4:

Fort Smith, Arkansas, April 14, 1916.

Whereas, we have been and are now confronted with an endless chain of litigation and expense which is becoming exceedingly burdensome to our people and which litigation seeks to in addition to the recovery of large sums of money to bring about the dissolution of our organization as a National union, and

Whereas, we are only a subordinate branch of the International Union, we feel that inasmuch as the litigation now

pending in this District should be taken over by the International, as they are the parent body and the expense incurred borne by the membership as a whole rather than by the District:

Resolved, by the delegates assembled, that the District officers be at once instructed to take this matter up with the International Organization and urge them to take over said litigation direct and finance the cost incurred in same.

On behalf of Local Union No. 2053, Spadra, Ark.

(Signed) CLAUDE CLARK, Pres.
419 E. W. ABSTON, Sec.

Concurred in by the committee.

Delegate Aubrey: I move the adoption of the resolution, or the committee's report.

Motion duly seconded."

Mr. Drinker: And on page 270, Chairman Wilkinson declares the motion is carried. The middle part I don't care to bring in, but it was just to show that it was not just a local union proposition.

The Court: As far as acts was concerned, it was District 21?

Mr. Drinker: The local union proposed the resolution, but it was adopted by the district.

Now, have you the United Mine Workers Journal for June, 1911?

Mr. Grant: I will state to the court that we have just discovered that in shipping these Journals there was an error made, and 1910, 1911 and 1916 were not shipped, and I have just wired for them.

Mr. Drinker: Here is the one I want.

The Court: Let opposing counsel see it before you offer it.

Mr. Drinker: Certainly. No, I won't offer that yet.

Now, from the Journal of September 18th, 1913, page 4, found on page 1132 of the old record, bottom of the page, the last sentence on page 1132: "And, to prove that charges they are introducing the arguments offered by operators and miners of the central States, in open conventions, verbatum

reports of which are published and can be obtained by almost anyone on request." That is merely an authentification of those reports, and on which we had a long argument before.

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420 I now offer the testimony of G. W. TRAER. He is in Chicago, and counsel have adopted a stipulation, [—]

The Court: I was going to ask you about that, you have entered into a stipulation, filed in the case to the effect that these depositions heretofore taken may be read on the trial of this case.

Mr. Drinker: That the testimony from the other record may be read as to any witness who is a hundred miles away or dead or sick, and Mr. Traer, to my knowledge, is in Chicago.

The Court: This is a stipulation signed by counsel and on file in this case?

Mr. Drinker: Yes, sir.

Mr. Warrum: The stipulation is as to the oral testimony in the other trial.

The Court: Very well, I will take your word as to the contents, I wanted to be sure it was filed.

Mr. Drinker: (Reading)

"Q. Your name is G. W. Traer? A. Yes, sir.
Q. Where do you live? A. Chicago.
Q. What is your business?
A. I am engaged at present in developing a coke process in Illinois coal, and I am also treasurer of an operating coal company in Illinois, not in the active operating business.
Q. During the period from 1898 to 1912, and subsequent, what was your business?
421 A. From 1898 to 1912 I was actively engaged in the operating and managing of coal mines in Illinois and Iowa.
Q. What companies were you with?
A. I was with several different companies. The early part of that time, in 1907, with a company called the White Breast Fuel Company, owning mines in Illinois and Iowa; and with the Cardiff Coal Company of Illinois and later I was receiver of the Illinois Colleries Company in Illinois, and had charge of a small organization of my own a year or two called the Traer Coal Company of Illinois.

Q. Now, during that period, from 1898 to 1912 did you participate in any of the joint conferences of miners and operators in the Central Competitive Field, and if so what ones?

A. Beginning with the first joint Interstate Conference in 1898, I participate in all of them until and including 1906, except the one in 1904.

Q. And did you hold any office in those conventions or any of them

A. I was chairman of the Interstate Joint Convention in 1902 and 1903 and 1906.

Q. Now, Mr. Traier I hand you six books marked Plaintiffs' 30-A, -B, -C, -D, -E, and -F and ask you in order to state what they are?

A. Outside of the record, do you want me to mention each one of them.

Q. You can go through them all and then mention them one after the other.

422 A. These books are the official printed proceedings of the joint conferences of the United Mine Workers and the coal operators of the Central Competitive Fields, as it was called, comprising western Pennsylvania, Ohio, Indiana and Illinois. These joint conventions, being meetings at which the joint contracts between the miners and operators were adopted, and these books, as far as I have been able to look into them, contain the debates in the convention, and scale of the convention, leading up to the adoption of the contract.

Q. Now you state that they were the official printed copies, what do you mean by the use of the word "official"?

A. They were compiled by the secretaries of the joint convention. In these conventions there was a secretary who was named by the miners, and an assistant secretary named by the operators, and they were both elected as officers of the convention; there was a reporter, shorthand reporter, who kept a stenographic report of proceedings, debates, and transcribed it and that report was audited by those secretaries and then published or caused to be published?

Q. By whom?

A. By them, or by the authority of the organization and was distributed, at least to the members of the operators organization, for subsequent use in later conventions, or in interpretation of the contracts between conventions.

Q. What was distributed?

A. The printed report in this form.

Q. Now, you stated that these printed reports were
423 used in later proceedings. For what purpose were they used in later proceedings, and how?

A. They were used for reference and discussion of what had taken place in previous meetings. They were used by common consent generally, custom and usage. They were the basis of reference for the record of previous meetings, when any question arose.

Q. Did that practice apply to any particular convention, or to all the ones which you attended?

A. No, these books were used continually, as long as I attended conventions; they were in general use at the conventions and between the conventions.

Q. And that applies to the proceedings at every convention from 1898 to 1906? A. Yes, sir.

Q. I wish you would define a little more specifically, for what purpose they were used by the miners and operators in these conventions, and what occasion arose for their use in that way?

A. Whenever any question arose as to what had been done or said in previous conventions or as to the interpretation of any part of the contract, these printed records were the source of information which were referred to.

Q. By the miners and operators indiscriminately?

A. Yes, sir. Any question which might relate to previous meetings or to the meaning of any part of the contract, if it was not entirely clear as to the intention of the parties.

Q. In the conventions which you say you have attended, was the typewritten transcript by the stenographer of
424 his proceedings ever so used?

A. Not to my knowledge, I never saw one. These books were habitually used.

Q. Now, Mr. Traer, independent of these proceedings, as reported in these books, I wish you would state from your own recollection, what, in the course of these debates and proceedings, was the provision taken respectively by the operators and the miners relative to the obligation of the miners, under the Chicago agreement of 1898, in connection with the protection of the Union miners from competition of Non-Union mines."

Mr. Warrum: Now, I objected before on the ground that I thought was so sound that I wished to renew it. The defendant objects for the reason that it calls for the interpretation by this witness of a long series of debates, and the construction that he put upon the remarks and the discussion, and is not asking him to state the contents of it.

The Court: He asked him to draw his conclusion from those debates.

Mr. Drinker: This was all passed upon at length by the Circuit Court of Appeals.

Mr. Warrum: [If] have been told that the Circuit Court of appeals did not pass upon this evidence.

The Court: You have [no] identified these debates, don't they show for themselves?

Mr. Drinker: He was there and he identified the books so we can read passages out of it. We had a tremendous fight in the other trial and in the Court of Appeals as to
425 whether we had properly identified these books, so as to read passages out of them. We called Mr. Traer and asked him relative to whether the operators told the miners that they would have to organize Non-Union fields in order to protect them, and he summarizes what was stated.

The Court: That may be, but after all you are merely taking the statement of the witness on what these debates meant.

Mr. Drinker: Not what they meant, but he is stating the operators made certain statements and the miners made certain statements, from his recollection of having been there. It is shorter than reading the whole book

The Court: True it is shorter, but the shortest way is not always the best. I would think what was expressed in those debates there would be the best [—] and from that could be drawn the intention.

Mr. Drinker: This man was there and heard those things. Now these books are not the best evidence necessarily, they are merely a transcript by the stenographer It is not a case of this being the written evidence.

The Court: I think it is better evidence than one's recollection.

Mr. Drinker: But is it the best evidence to say that because a stenographer has taken down a conversation with a witness, he can testify to it, because it was taken down?

The Court: I am not saying.

Mr. Drinker: Mr. Traer was at these debates, and testifies as to what was said.

426 The Court: No, he don't; he don't pretend to do that. He merely pretends to testify as to what was meant.

Mr. Drinker: I think he is summarizing their statements. Of course the point in this matter, perhaps, if I make it clear to your Honor what we are trying to prove it might help, we want to show the inception of the fear by the miners that if they did not unionize the non-union mines that their relations with the operators would be interfered with.

The Court: Now wait a minute; your reading of excerpts or extracts of all of these reports of the proceedings still leaves a doubt as to what was the intent of the conferees.

Mr. Drinker: I don't know about that. The other side have tried to explain,—we will make,—

The Court: I think you had better first read such as you see fit from these reports that have been identified, and withdraw this offer at the present time, and if I see any necessity for it later I will let it in. I am very much afraid of this question, but if the Court of Appeals and the Supreme Court has ruled on it, that settles it.

Mr. Drinker: I don't believe there was any objection to Traer's testimony at the other trial.

The Court: Well, you can look through the reports.

Gentlemen of the jury, under the admonition I have given to you, we will take an adjournment until ten o'clock tomorrow morning. Let me say to you this, our hours of holding court are short, so you will endeavor to be here promptly in the box at ten o'clock tomorrow morning, so there may be no delay because the absence of one juror will delay the
427 entire trial. You may pass out now, and return at ten o'clock tomorrow morning.

The court is very much pleased with the progress made in this trial today. Everyone appears to be working as rapidly as possible, so during the progress of this trial the hours of actual court trial will be short. That of course will give counsel an opportunity of determining what shall be done the next day, and I think we will gain as much time as if we held longer hours.

We will now adjourn until ten o'clock tomorrow morning.

(Whereupon, at 4:35 o'clock P. M., an adjournment was taken until Tuesday, October 16th, 1923, at ten o'clock A. M.)

428 Tuesday, October 16, 1923.

10:00 o'clock A. M.

Pursuant to adjournment at 10:00 o'clock A. M., on Tuesday, October 16, 1923, Court reconvened , the parties appearing as before, and the following proceedings were had and entered of record.

The Court: Proceed with the trial, Gentlemen.

Mr. Drinker: If the court please, I think on yesterday, I cannot be sure, but according to my notes, I fear that I forgot to read four lines of Mr. Green's deposition that I want to read. I was hurrying so fast to get through, and if I may read that, on page 654 of the record, the middle of the page.

"Mr. Drinker: Now, I offer in evidence the eight volumes produced by the witness Green, marked Exhibits No. 30-A, Exhibit No. 30-B, Exhibit No. 30-C, Exhibit No. 30-D, Exhibit No. 30-E, Exhibit No. 30-F, Exhibit No. 30-G and Exhibit No. 30-H."

Now, of your Honor please, we are working with Mr. Traer's testimony and in that connection Mr. Warrum had made an objection to a question which I asked him, which was to state what was the position taken respectively by the operators and miners relative to the obligation of the miners under the Chicago agreement of 1898, in connection with the protection of the Union miners from the competition of Non-Union mines.

The Court: You were to put that book on my desk and I was to look at that.

Mr. Drinker: Now, the answer which he gave is over on the right hand side of the next page.

429 The Court: I suppose that this paragraph, the answer of the witness on page 2457 is what you are offering?

Mr. Drinker: Yes, sir.

The Court: How are you going to hold any labor organization on that?

Mr. Drinker: The relevancy of it is this. The question is not at all,—

The Court: It is not a question of relevancy but of competency.

Mr. Drinker: The question of competency is this. What we are trying to prove, and the crucial point in this case is whether in destroying our property the miners did it with the intention of interfering with Interstate Commerce?

The Court: How can you prove that by what the operators said?

Mr. Drinker: It is not what the operators said, but what the miners knew, and here is a decision by the Circuit Court of Appeals of the Eighth Circuit on that point. The whole point in this discussion is to show that the miners knew that if a Non-Union mine started up it would take the business away from the Union operators. I would like to explain, if your Honor will permit me, the basis of a great deal of this proof, and which I think the Circuit Court of Appeals, without defense in this case, [as] held to be admissible in this very case.

The Court: Suppose those assertions were made?

Mr. Drinker: It is not whether they knew them to be true, but whether they knew the claim was made by the op-
430 erators. The operators were all the time saying to them, "We will not continue relations with you unless you organize these lost-cost, Non-Union fields. The question is whether the miners in forcing a Non-union mine, did it for that purpose. We will bring some more direct testimony, but we have to prove, certified by statements that were made to the miners, how they found out what would happen if the Non-Union mines got started in the Union Districts.

The Court: Does this involve,—

Mr. Drinker: I am trying to bring notice to the miners.

The Court: I will exclude it at this time.

Mr. Drinker: Would your Honor care to read what Judge Hook said in this case? I don't want to try your Honor's patience, but I had this argument with Judge Elliott, and when he read that, he took my view of it. It is the last paragraph of the opinion.

The Court: I have read these opinions, but this is merely the witness' opinion as to what was said, and what they meant and intended. I will exclude it at the present time.

Mr. Drinker: As I understand on yesterday we had a stipulation that exceptions would be duly saved to all adverse rulings.

The Court: Perhaps you had better taken an exception there.

Mr. Drinker: An exception.

(The answer so offered by the plaintiff, and excluded by the Court is in words and figures following to-wit:)

"A. Beginning at the convention in Pittsburgh in 1899, which was the one next following the adoption of the original contract, the coal operators, many of them, throughout
431 the meetings, called upon the miners,—I will change that form of expression a little bit. They claimed that the miners had not, or stated that the miners had not complied with the Chicago agreement in bringing about the conditions in the Non-Union field, the mining conditions and scale of wages to these in the Union field.")

Mr. Drinker: Now, on page 2458 of the record.

Mr. Warrum: This is cross-examination of this witness.

Mr. Drinker: I beg your pardon.

Mr. Warrum: This is the testimony of Mr. Traer, the operator whose evidence was read yesterday.

"Cross-Examination

By Mr. Warrum:

Q. These conventions were called together in what way, Mr. Traer?

A. The original convention was called by an informal joint conference of representatives of the United Mine Workers and operators, from the respective states, and at the Chicago Convention, when the work of adopting the contract had been completed, and the convention adjourned, it adjourned to meet again for the purpose of endeavoring, or negotiating another contract at a fixed time. For instance, at first meeting, [at] adjourned at Pittsburgh, to a stated date, and then adjourned at Indianapolis to a stated date.

Q And from year to year they met pursuant to these, adjournments? A. Yes, sir, until 1906.

Q. Every convention was opened usually by the sub-
432 mission of the miners demands, quoted from their annual convention, were they not?

A. Yes, sir, I think so.

Q. And in the early years, during the time that you took part in these conferences, they were joint conventions of operators and miners? A. Yes, sir.

Q. The miners annual convention held over until the joint conference had terminated, is that correct?

A. That is according to my recollection.

Q. After the miners proposition was submitted to the operators, a debate would follow all of the questions in the miners demands, whether those questions were mine-run coal, check-off, or conditions of mining, or the wage scale, or whatever it might be, is that correct?

A. In a general way that is correct, although the major debate did not, as a rule, immediately follow the submission of the miners proposition.

Q. What did usually follow the submission of the miners proposition?

A. There would be possibly some discussion of it, and I think, as a rule, the operators would submit counter propositions.

Q. Yes.

A. And then, after possibly a little more discussion, the entire matter would be submitted to a joint scale committee, which was a representative joint body from the two constituent parts of the main convention.

uent parts of the main convention.

433 Q. And they would report their deliberations and agreement, if they come to an agreement, to the joint conference.

A. Yes, sir.

Q. And then the miners had so many representatives there, that is, the number of conventions during the years that you participated in, and the operators had so many persons present, is that right?

A. Yes, sir.

Q. And each state was allowed an equal number of votes, no matter how many miners or how many operators, the miners would have four votes and the operators four votes, from each state?

A. Yes, sir.

Q. And in Indianapolis the block coal field operators had two votes, and the bituminous had two votes, and the miners the same, is that correct?

A. Yes, sir, I think that is correct, according to my recollection.

Q. And these debates would cover a great many days?

A. From one to two or three weeks.

Q. And sometimes they would be adjourned, and meet together at some other city, or at the same place, is that right?

A. I think not adjourned to any other city, although once, if not twice, they adjourned to meet again at Indianapolis."

I will not read any further from the cross-examination because it is directed to the matter excluded by the court.

The Court: Proceed.

Mr. Drinker: If your Honor please, it seems to me
434 the other side has gone into what was debated and how it was debated and what was done, and it seems to me we can show that now.

Mr. Warrum: I carefully excluded that.

The Court: I think not. Proceed.

Mr. Drinker: From the joint conference proceedings in 1901, lines 13 to 15, the second paragraph of the remarks of Mr. Vogle?

I will say that all of the extracts I am now going to read are from the debates, and from the miners conventions, along this line.

The Court: That is, what was said in those conventions?

Mr. Drinker: Yes, sir; that will be the general line.

Mr. Warrum: That was Mr. Vogle?

Mr. Drinker: Yes, sir, at the Chicago convention, and all these statements were admitted I think,—they were all admitted, I think, in the prior record in the other case, and passed on by the Circuit Court of Appeals as admissible and competent.

The Court: Suppose you go ahead.

Mr. Drinker: I beg your pardon, I was trying to tell Mr. Warrum what it was so he might understand, in connection with his objection. It is a mere matter of courtesy to him.

The Court: I apprehend he will understand it.

Mr. Warrum: The defendants separately make the same objection, that this is a mere matter of debate.

The Court: I have ruled on it before. Proceed.

To which action and ruling of the court the defendants
435 at the time duly and still except.

Mr. Drinker: "At the Chicago Convention the United Mine Workers organization agreed with the operators of the

four states that they would bring West Viriginia into the fold. Again at Pittsburgh, they promised the same."

Now, from the joint convention proceeding for 1901, at page 107, Mr. Mitchell's statement, which is not in our record, but in the record in the Pennsylvania Mining Company Case. Have you the original convention proceedings here for 1901?

Mr. Warrum: I don't see them.

Mr. Drinker: I will prove it out of the Pennsylvania record; it is from the same proceeding, but the book is not here. Page 792 of the record in the Pennsylvania Mining Company case.

Mr. Warrum: The same objection.

The Court: The same ruling. I apprehend that counsel for the defense will conceed that it was the effort of the operators and of the defendant in this case, the Labor Organization, to Unionize all the coal miners.

Mr. Warrum: That was the purpose of the United Mine Workers of America, their desire and their effort.

The Court: Will that cover it?

Mr. Drinker: Absolutely not. What I want to show is the purpose, the purpose was to protect the Union operators and that was urged on them at every meeting that they had with the operators before the trouble came, and therefore the inference is that when they knew they could not get along with Union operators, that with the Non-Union mines, then
436 they destroyed it, and it was for the purpose of doing that. The Supreme Court said that is perfectly good testimony, provided we supply the connecting link between the southwest and the Central Competitive Field, which I will supply when I get through with this.

The Court: Proceed.

To which action and ruling of the Court the defendants at the time duly excepted and still except.

Mr. Drinker: (reading)

"Mr. Mitchell: I don't know whether my conception of the relationship between ourselves and the operators is correct or not, but it appears to me that where we are jointly interested in advancing rates in other fields we ought to work together where we can. It takes money to organize. West Virginia coal is sold in competition with Pennsylvania and Ohio coal.

This cannot be stopped until the miners there are organized, and it seems to me that it would be but fair for the operators to join this far, that they would try in every way in their power to help us organize these fields. We believe that as long as our organization is held responsible for the observance of every agreement that we enter into, that every man is employed by your companies should hold allegiance to the organization that is held responsible. I dare say that if the unorganized men in the Pittsburg District were to engage in a strike, that the Pittsburg Coal Company and the
437 Monongahela Coal Company would call on our organization to enforce the rate. If I am not mistaken that has been done."

Mr. Drinker: From Page 2356 of the former record, the remarks by Mr. Robbins.

Mr. Warrum: The same objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"Four years ago, in the city of Chicago, we agreed to be in the advance guard on the question of an eight-hour day, with the distinct and absolute promise that unless our competitors were brought up to the same conditions that we would be put back where we were. And what is the result? None of our competitors have been brought up. In no place that we compete, that I know of, has an eight-hour day been established. We are competing constantly with operators that still have a ten-hour day. Their cost is proportionately less."

Mr. Drinker: Page 538 of our record.

Mr. Lucas: Resolution No. 33,—

Mr. Warrum: The defendants separately renew their objection.

438 The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading) Resolution No. 33.

"Whereas, the miners of Virginia and Kentucky in the past have been a detriment to the organization in other states by their not being organized, therefore, be it resolved, that our

National organization shall use its power in all forms to bring these miners into the organization.

Passed by Sub-district 1 of District 12, and endorsed by all the locals in said sub-district.

ALFRED S. PENN,
Local 874."

The committee recommended that this resolution be referred to the National Executive board. On motion the report of the Committee was concurred in.

Mr. Drinker: Page 541, from the miners convention of 1902, page 117.

Mr. Lucas: (Reading) "The special Committee appointed to arrange competitive scale districts reported as fol lows,—

Mr. Warrum: The defendants separately renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"Indianapolis, Ind, January 28, 1902.

To the Convention of the U. M. W. of A.

439 Your Committee on Scale Districts begs leave to make the following report:

The Committee recommends the following Districts for scale purposes, and the National officers are hereby instructed to do all in their power to establish joint conferences in these Districts:

Scale District No. 1 shall be composed of the anthracite coal fields of Philadelphia.

Scale District No. 2 shall be composed of central and northern Pennsylvania bituminous coal fields, Maryland, Virginia and that portion of West Virginia which ships the majority of their coal to the Eastern market.

Scale District No. 3 shall be composed of western Pennsylvania, the Fairmount and other sections of West Virginia which ship coal west, Ohio, Indiana, Illinois, Michigan and Iowa.

Scale District No. 4 shall be composed of Alabama, Tennessee, and Kentucky.

Scale District No. 5 shall be composed of Missouri, Kansas, Arkansas the Indian Territory and Colorado.

The Committee recommend the adoption of the above scale District, subject to change by the National Executive Board whenever competitive conditions require it.

The Committee further recommends that the Joint Conference called for April in District No. 25 be postponed, subject to the call of National Executive Board and District Presidents of Districts 14, 21 and 25.

The Committee further recommends that all agree-
440 ments be made to expire on the same date, and that all the agreements include the eight-hour day.

(Signed) T. L. LEWIS, Chairman,
JOHN P. REESE, Secretary.
J. W. HOWE,
T. D. NICHOLS,
THOMAS HAGGERTY.

It was moved and seconded that the report be adopted as read.

The motion was carried by a unanimous vote."

Mr. Drinker: Page 542 of the same proceedings, 1902.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"Report of Special Committee on Organization.

"Indianapolis, Ind. Jan. 28, 1902.

Officers and Members of the Thirteenth Annual Convention,
United Mine Workers of America:

Gentlemen: We, your Special Committee, appointed to formulate a policy which would [cuminate] in a complete organization of all the competitive fields, are fully convinced that the two Virginias have been a menace to the perfection of our organization.

Therefore we recommend that the National Executive Board pursue the most aggressive policy that they, in
441 conjunction with the several District Presidents, can pursue to bring about organization in the different Districts, not only in Virginia but in all other Districts.

We also recommend that the National Executive Board be empowered to employ organizers of different Nationalities to help National and District Officers in this work.

We further recommend that in case of a strike in any District of the employes of any company who operates mines in competitive or other Districts that the National Executive Board be empowered to order a suspension of work in said mines in support of strike in said District, if, in their judgment, it is deemed advisable.

JOHN VASEY,
J. D. WOOD,
J. A. SPRINGER,
PATRICK GILADY,
WM. LITTLE,
JOSEPH PENDLETON,
Committee."

On motion the report was adopted by a unanimous vote of the Convention and the committee discharged."

Mr. Drinker: Page 556 of our record, from the joint convention proceedings of 1904, remarks of Mr. Mitchell.

Mr. Warrum: Defendants renew their objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

442 Mr. Lucas: (Reading) "Every year that we have met in these conventions we have heard the statement made that the reason the operators represented here could not comply with the scale of wages proposed with the miners was the fact that they were meeting an unfair competition from the Fairmount District of West Virginia."

Mr. Drinker: Page 565, so much of the list of delegates as will show that Mr. Bogle and Mr. Robbins were operators, and Mr. Mitchell was the president of the United Mine Workers.

The Court: Very well.

Mr. Drinker: Page 56, from the joint convention proceedings of 1904, page 118 to 119, and skipping a part in page 121 of that proceeding.

Mr. Warrum: The defendants renew their objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading).

"Recommendations of the National Officers Issued in Accordance with the Instructions of the Special Convention.

"Local secretaries are instructed to read these recommendations to the members before the vote is taken.

"Indianapolis, Ind., March 9, 1904.

To the Members of the Local Unions of the United Mine Workers of America,—Greeting:

* * * * * * * *

"If a strike is inaugurated we have no assurance that
443 we can control the situation in West Virginia outside of the Kanawsha field and a few operators on the Baltimore & Ohio road. Neither can the Irwin, Connellesville nor Klondike fields in Pennsylvania be depended upon to cease work if a general suspension is declared. On the contrary, the indications are that they will continue to work, and while such action on their part might not materially injure us in the face of advancing prices, it would be a serious menace to our success when the market is on the decline. Men who will strike and suffer all the hardships of a long struggle when they know that others are striking also, will hesitate, weaken, and finally return to work when day after day coal is being produced and shipped past their own doors into the markets which they formerly supplied. With large numbers of men in Western Pennsylvania unfamiliar with the principles of trades unionism it could not be depended upon to remain solid during a long conflict under conditions of this kind. If our forces in that field are defeated and lower wages and worse conditions are forced upon them it would be impossible for the miners in the other fields to maintain even the rates that are now being offered, and, with a weakened organization we would be confronted with the possibility that some of the

operators may seek to widen the differential between pick and machine mining.

Fraternally submitted,

JOHN MITCHELL,
National President.

T. L. LEWIS,
National Vice President.

444 W. B. WILSON,
National Secretary Treasurer."

Mr. Drinker: On pages 567 and 568, from the miners convention proceedings of 1904, resolution No. 7:

Mr. Warrum: The defendants make the same objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

"Resolution No. 7.

To the Members of Local Union No. 31, U. M. W. of A., of Craig, Ind. Ter., District 21:

We, your Committee on Resolutions, submit the following for your approval or disapproval:

In compliance with the order to send delegates to Indianapolis, Ind., to represent Local Union No. 31 in National Convention, we herewith comply with the following resolutions:

Whereas, Indomitable energy, the prompt attention and the wisdom and capability and the successful attributes displayed in reaching results, the unselfishness of purpose, the honest of policy in accomplishing and reaching ends, aiming at the elevation and betterment of the U. M. W. of A., therefore be it

Resolved, That we, the members of L. U. No. 31 of Craig, Ind. Ter., in body assembled, on this the 22nd day of December, 1903, do approve and endorse the action of our National Officers and firmly believe that best interests of the craft will be furthered by a continuance of the same. With hearty approval we offer our sincere thanks for their work of the past and pray that a wise Providence guide them to success-
445 ful ends in the future; and be it further

Resolved, That we entirely approve of the action of our National Officers in sending organizers to spread the propa-

ganda of the United Mine Workers of America to countries on the outside of our national jurisdiction; and be it further

Resolved, That we approve of the National Board using the funds of the U. M. W. of A. in spreading the teachings of our craft, and conclude that the benefits derived will justify the outlay of funds; and be it further

Resolved, That in strict compliance with our obligations and teaching we accord a hearty approval to our National Board on its action in regard to District No. 15, strike, now on, in Colorado, and whatever action taken by the National that in their judgment is necessary to the successful ending in the elevating of the craft in District No. 15 meets our entire approval, for which we pledge our unqualified support, as our knowledge of the field of southern Colorado in the event of an unsuccessful issue of the trouble now pending would work almost unsurmountable and incalculable damage to District No. 21, as it would be an unjust competitor in the same commercial field and could with very little effort undersell and supersede us in the Oklahoma and southwestern Kansas markets. We, as a body, recommend that our National Officers take some action in regard to State and National legislation for the safety and welfare, health and comfort of our craft; and be it further

Resolved, That the National recommend to the several
446 districts to take definite action and place the same restriction on miners of coal in strip pits, bank robbers, or coal mined in any manner that is placed in competition with coal mined by United Mine Workers.

WM. L. ANDERSON,
JOHN L. FAHY,
JOHN CONROY,
Committee on Resolutions."

I. N. Day, Pres.,
A. Bane, Rec. Sec'ty,

"This appears to be a document submitted to a local Union. If the writer of this is here he may be able to explain it better than the committee.

The committe concurred in the resolution.

On motion the report of the committee was approved."

Mr. Drinker: I may say in explanation of the term
447 "Bank Robbers", it does not mean burglary. It means digging the coal right out of the ground without going down into the mine.

Mr. Warrum: I object to any explanation unless he goes on the stand and testifies as an expert.

The Court: I suppose that would be a matter of special knowledge.

Mr. Drinker: We can call a witness to prove that, if necessary. We offer in evidence, from page 571 of our record, from the Joint Convention Proceedings of 1906, page 9, two-thirds of the way down the page, remarks of W. B. Wilson.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Mr. W. B. Wilson: Mr. Robbins has stated that this proposition comes up in every convention. It is true it comes up in every convention, but it has come up in every convention because it is right, and no proposition is ever settled until it is settled right. If I understand the principle upon which this movement is based, it is to bring into the joint conference those operators and those miners whose competitive business is closely related to each other; and in asking that the operators and miners of the Southwestern district be admitted to this conference, we are simply carrying out that principle. The coal mined in western Pennsylvania comes in immediate and direct competition with Ohio;
448 that mined in Ohio, as well as that in Pennsylvania, comes in competition with Indiana and Illinois; that mined in Illinois comes in competion with Iowa; that mined in Iowa comes in competition with Missouri, and coal mined in Missouri comes in competition with Kansas, Arkansas and the Indian Territory. They are all related to one another; they are all competitors with one another, and it is another; they are all competitiors with one another, and it is but just and fair that each of these fields should have a representation in the joint conference that sets a base for the prices of the ensuing year. This is the first conference that is held. Whatever wages are agreed upon here, whether it is an increase in wages, a decrease in wages, improved conditions or otherwise, it sets the pace for other districts, and those other districts have no voice in saying what that price shall be."

Mr. Drinker: We next offer from page 572 of our record, from the joint convention proceedings of 1906, page 111, the operators demands.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "The following amendments were offered as substitutes in the order given:

(1) That because of the failure in this interstate movement to change the conditions of a ten hour day in the unorganized fields as agreed to in the Chicago convention, that we return to a ten hour day."

Mr. Drinker: We next offer from page 574 of our record, from the joint proceedings of 1906, page 226, remarks
449 of Mr. Chapman.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "If you gentlemen upon that side of the house will provide means by which you can stop the competition from West Virginia, from West Virginia, from Kentucky and from Tennessee coming into the city of Indianapolis and into Ohio cities and taking the trade of the Indiana and Ohio miners, then there would be some consistency in this thing. But there is no remedy proposed. This competition is going on, and it will continue to go on. And if the operators have to pay higher prices for the production of their coal in these states it means the closing, the shutting up, the destroying of the value of many of these properties."

Mr. Drinker: I next offer on pages 574 and 575 of our record, from the joint convention proceedings of 1906, pages 214, 216, 217 and 218, extracts from parts of each of those pages.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Delegate John P. White, President of District 13, for the scale committee, reported as follows:

Indianapolis, Indiana, January 22nd, 1906.

We, your committee on Scale, after careful considera-
450 tion, submit the following report:

1. We demand that Districts 13, 14, 21, 24 and 25 be admitted to the interstate joint conference; also the admission of all outlying districts whose operators are willing to participate.

President Mitchell: You have heard the report of the Scale committee. What is your pleasure?

Vice-President Lewis: I move that the request be accepted and that we take it up seriatim for action. Seconded.

Delegate J. H. Walker: I move that consideration of the report of the Scale committee be deferred until nine o'clock tomorrow morning. Seconded.

Vice-President Lewis: That is entirely satisfactory to me.

The motion to defer was carried."

"President Mitchell: Consideration of the report of the Scale committee was made a special order of business for nine o'clock this morning. The proposed scale will be considered seriatim, as provided for in the motion of yesterday.

Section 1. We demand that Districts 13, 14, 21, 24 and 25 be admitted to the interstate joint conference; also the admission of all outlying districts [whole] operators are willing to participate.

It was moved and seconded that Section 1 be adopted.

Delegate Williams moved that the section be amended by inserting Distri[illegible] 1, 7 and 9, and striking out 'also the admission of all out[illegible]ing districts whose operators are willing to participate.' Seconded.

Secretary Wilson: As a substitute for the amend-
451 ment, I move that the first section of the Scale committee's report be presented to the joint convention before the remainder is presented, and if the operators fail to agree to it, that the joint conference be adjourned and the action reported to our own conventions. Seconded.

The amendment was discussed by delegates Richardson (Kansas), McKay (Pennsylvania), White (Iowa) and Secretary Wilson.

The substitute offered by the Secretary Wilson was then voted on and adopted.

Section 1 of the committee's report, as amended, was then adopted."

Mr. Drinker: We next offer from page 577 of our record, from the miners' convention proceedings. When I say "miners' convention", your Honor, I mean the conventions in which only the miners were represented, and "joint conventions" refers to conventions where the operators and miners met jointly. This is from the miners' convention proceedings of 1907, page 288, remarks of Mr. Green.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Now, something must be done. It is absolutely necessary to protect us against the competition that comes from the unorganized fields east of us. I believe a national movement would have induced West Virginia to become organized, and that, like other districts in 1897,
452 it would have meant the organizing of that field. That would have brought us the protection we so richly deserve, and that is so absolutely necessary for us to have."

Mr. Drinker: And so much of the proceedings are offered as show that Mr. Green is one of the defendants in this case, and Secretary-Treasurer of the International organization.

I now offer from page 578 of our record, from the miners' convention proceedings of 1907, pages 59 and 60, remarks of Mr. Feehan.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "The 30,000 organized miners in District No. 5 have as neighbors thousands upon thousands of unorganized miners in the Irwin field and the Connellsville region who are a constant menace to our organization."

Mr. Drinker: From the same proceedings, page 1146 of our record, miners' convention proceedings of 1907, page 336, remarks of Mr. O'Connor.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Four years ago 60 per cent of all the steam coal and practically all the domestic coal used in the city of Evansville, Mount Vernon and for the Southern
453 trade was mined by non-union men. Through the action of that convention, and through our effort last year we have the non-union coal practically shut out of Indiana. There is only one firm on Main Street in Evansville that is using non-union coal, and that is a cigar factory.

Mr. Drinker: From page 580 of our record, from the joint convention proceedings of 1908, pages 59 and 60, remarks of Mr. Feehan.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "I am very desirous of lending all of my efforts to prevent, if possible, the production of non-union coal. I know that it has been my policy as an officer of the organization to try if possible and agree along with the operators who have entered into a contract with us and are dealing as business men should do, and if I had any fighting to do I would want to fight the fellow that was unfair and who was taking advantage. We feel that this should be done."

Mr. Drinker: From the miners' convention proceedings of 1908, page 580 of our record, from the farewell address of President Mitchell of the United Mine Workers.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

454 Mr. Lucas (reading): "Let me remind you now that strong and powerful as your organization is, it is not yet

a Gibraltar. The old saying that no chain is stronger than its weakest link holds good in this union. The strength of your union is not its best organized district. Unfortunately—and I say it regretfully—its strength is its least strongly organized fields. You can not be permanently safe, you can not rest in security, until West Virginia, the Irwin field, the Connellsville and the Meyersdale regions of Pennsylvania are organized. You men of the mountains of the West are not secure until southern Colorado is organized. It may cost money, it may cost sacrifice, but gentlemen, sleep not until those men and those districts are enrolled in your union. (Applause.)"

Mr. Drinker: From page 583 of our record, from the miners' convention proceedings of 1908, remarks of Mr. McCullough. That is not in our record. That is from the convention proceedings of the miners in 1909, page 503. It is on page 1343 of the record in the Pennsylvania Mining Company case, remarks by delegate McCullough.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Delegate McCullough, District 24: As I understand this resolution, it provides for a more strenuous campaign of organization. I believe that every man in this convention, with his constituents at home, are desirous of seeing the unorganized miners of this country become
455 members of the United Mine Workers of America, and in discussing this question, Mr. Chairman, I would not permit my disrespect for any individual to bias my judgment on the matter. I have had an experience of five years in the unorganized fields of this country, and what I say will be said from what I learned in those five years. Throughout Maryland, Pennsylvania and West Virginia there thousands upon thousands of miners who are not members of the United Mine Workers of America. It is our desire and has been our effort to get those fellows into line. We realize the effect of the non-union coal mined in that country upon the union men in the formation of our wage scales. We believe that as long as those men are permitted to remain unorganized they are pirates in the commercial sea, going out into the markets and

underselling, taking the trade that naturally belongs to the union miners of this country."

Mr. Drinker: Page 582 of our record, from the miners' convention proceedings of 1909, page 498, remarks of Mr. Haggerty.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Central Pennsylvania last year passed a resolution asking that international organizers be appointed and placed in the adjoining fields that are in direct competition with us and are threatening our homes and moving in the direction of the organized fields. That request was denied by the international executive board and by President Lewis. I want to say in support of President Feehan's resolution that it ought to go farther. There are a hundred
456 thousand men in the bituminous mines of Pennsylvania that are not allied with this movement. There are, Mr. Chairman, in the neighborhood of fifty thousand miners in District 17 that are on the outside of this movement east of the Ohio River. The great bulk of the coal mined by those mines comes in direct competition with the fields of Central Pennsylvania. This resolution is an important one. Take the Fairmount field of West Virginia, and there is not a single, solitary local union, with the exception of one small one, located at Cannelton in that field. There is not a single, solitary local union in the Meyersdale field, there is not an organization existing anywhere in the part of Pennsylvania that surrounds the Central district. Those fields are in direct competition with us. The money of this organization should be spent in the non-union districts in order to protect the districts where an organization has been established and wage contracts made. Why is it that there are over 70 International organizers, and yet few of them working in the non-union districts, but are stationed, and have been for the past year, in such fields as central Pennsylvania?"

Mr. Drinker: From page 583 of our records, miners' convention proceedings of 1909, page 880, remarks of Mr. Farley.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Something will have to be done in Alabama sooner or later if Kentucky and Tennessee are
457 to be protected, because if Alabama goes down so will all the states south of the Ohio River."

Mr. Drinker: From pages 583, 584, 586 and 587 of our record, extracts from each of those pages, from the joint proceedings of 1910, page 17, remarks of Mr. Maurer.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "The chief evil was the fact that districts which did not recognize the United Mine Workers and had no agreements with them produced coal much more cheaply than those districts which sustained contractual relations with that organization. Some of the more important factors influencing those conditions were different methods of producing coal, varying costs of mining, different hours of labor, different sized screens, not mentioning various other elements."

"The granting of the eight hour day by the operators, after making these numerous other important concessions, was with the distinct understanding and explicit promise of the miners to give to the operators of the four contracting states adequate protection against the competition of the unorganized fields. From year to year they have been called upon to fulfill that promise.

The operators, parties to that agreement, at the time of its execution felt that it was absolutely necessary to the safety of their investments that they be protected from the encroach-
ments upon them by their competitors of the unorgan-
458 ized fields. The tonnage of the non-union fields entering into the competitive markets, particularly from West Virginia and Kentucky, at that time was not so large, as it was aggressive and threatening, the total tonnage entering directly into competition from those fields being approximately 600,000 tons."

"The operators of the districts here represented are willing and ready to pay as high price to their labor as is paid by the operators of districts producing coal entering into competition with them. ..... If there be any merit in

the claim of mutuality of interests, it is encumbent upon both operators and miners to meet these conditions, each sharing the responsibility for the result. Our interests must be protected if employes are to find work; and in order to protect those interests and to give that employment, we feel that this is the time for an agreement based upon a recognition of the actual conditions and wages paid in the states producing coal entering into competition with us.

Finally, we ask for the fulfillment of the pledge of 1898 upon which we made to the miners so many important and costly concessions. Though that promise has not been kept, we have continued for 12 years to make additional concessions by increasing the mining price from 66 cents agreed upon at that time to 90 cents, and in other respects conceding demands without any compensating concessions upon the part of the miners, until we now find ourselves at the limit of financial safety. The operators can make no further concessions. It is now, in our view, not only to the interests of the miners, but their duty as well, to do their share to meet these conditions."

458½ Mr. Drinker: Skip the next paragraph.

Mr. Lucas (reading): "We believe this to be a true statement of fact, and therefore call upon you to relieve us as well as yourselves from the unfortunate situation in which we now find ourselves, due to the failure of the miners' organization to keep the faith pledged at Chicago in 1898.

We therefore insist that your organization place the districts, parties to this agreement, on the same relative basis as the unorganized districts with which we were compelled to compete."

Mr. Drinker: From page 589 of our record, joint proceedings of 1910, remarks of Mr. Green.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Let me point to the fact that the United Mine Workers of America have diligently and aggressively attempted to carry out the promise made in Chicago in 1898; that they have done everything in their power to redeem any promise they may have made to organize West Virginia. Since 1898 our organization has at various times

spent hundreds of thousands of dollars trying to unionize West Virginia. We have also sacrificed human lives in the attempt to redeem that promise. In view of the fact that we have spent hundreds of thousands of dollars and that our organizers, our members who have sacrificed their lives and their liberty, we should be given credit for what we have done.

459 I want to ask the operators how much money they have spent and what they have done to aid us to organize West Virginia.

Is the fact that we have spent hundreds of thousands of dollars appropriating from the small earnings of our people in the Central Competitive Field, and the fact that we have sacrificed the liberty of some of our members any evidence that we have tried to redeem that promise? Does that not show that we have honestly, sincerely and diligently attempted to redeem it? I believe, gentlmen, that if the operators had done one-half as much as the miners have done, if they had even co-operated with us in what we have done, West Virginia would be organized and the operators and miners of that state would be here today participating in this joint movement."

Mr. Drinker: From pages 590, and 591 of our record, from the same proceedings, page 51, remarks of Mr. Penna.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Warrum: If the court please, these gentlemen are reading these extracts, and jumping from one book to another. I should like to ask if we will be permitted to cover all this territory in our cross-examination at some subsequent and later time. It is almost impossible to do it now, the way they are reading it. It would save time to defer it.

The Court: Can we not finish this class of evidence and then allow them to cross-examine?

460 Mr. Drinker: Yes, with this particular line. There is one class of books, joint convention proceedings of the Southwest, that it will not be here until tomorrow. That is a distinct thing by itself. I would not say I would not want to put other extracts in as time progresses.

The Court: When this class of examination is finished, they can cross-examine after that.

Mr. Warrum: We would like time enough to look it over. They jump from one to another, and sometimes one sentence is read, and then three or four sentences are missed. There is no sequence about it.

Mr. Drinker: I am trying to shorten it all I can, sir.

The Court: Proceed.

Mr. Lucas (reading): "There are some facts that it is useless to attempt to ignore. The very purpose of the union is to increase the price of labor, to reduce the hours of labor, and then when that is done in this meeting we go home and there are attempts made, and often enforced, that further increase the cost. That is the very purpose of unionism. It has no right to life on any other plane than that, or at least we have never discovered it. It has no object in existing that we know anything about except to increase wages and decrease hours of work, and it has been successful in doing it. It is also a fact that not more than one-half of the miners in the United States are unionized. Those who are not unionized work more hours, perform more labor for less money, and as a result throw on the market a cheap product. Those are the non-union men, those are the men who are our mutual foes.

They are your foe, and as long as you pursue a policy
461 of trying to get more from the operators in the territory that is unionized, getting more directly and getting more by indirect methods, you are furnishing and inducement to the non-union miner and to the non-union coal operator to remain in that position, because they are better able to take your trade, they are better able to take our markets, they are better able to get your work, and the operators are better able to get our profits."

Mr. Drinker: From page 2355 of our record, from the joint convention proceedings of 1901, pages 112 and 113, remarks of Mr. Lewis.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "I think this conference is getting to that point where we should strip every question clean of every sentiment. I believe when we do that we are getting to a point where we can discuss these questions as they affect our interests jointly, and from that point I for one would like to know what the purpose is, and why we inaugurated what

is known as the joint movement in the four states represented? In asking that question I am going to answer the question as I understand the purpose why we met. And in doing so I am willing to assume as broad a position and stand on as broad a platform as any man in this hall, it matters not to me whether he represents the operators or the miners.

462 In the first place, as I understand it, we had something of a guerilla fight in the mining industry. Every operator was seeking to enter the market and sell a ton of coal against his competitors at whatever cost. In order for them to do that it was necessary for them to reduce the wages of the miners step by step, until it became a question with the miners of this country whether it was not as well to starve being idle as to starve working. I am free to admit that under those conditions many of the operators went into bankruptcy. If this be true, and I don't think that it can be questioned, then it was necessary, not only for the miners, but for the operators as well, to assume certain responsibility to give stability to the mining industry. Realizing this, we met in joint convention. We agreed on a certain scale for mining and every man, whether he was in the organization or out of the organization, on our side of the compact was expected to adhere strictly to every term embodied in that contract. You know, and every man in the hall knows when the first compact was made that the miners of this competitive field were not as well organized as you, and we would both like to have seen them, in order that there would be no friction between us in the year following that argument. We have attempted to the best of our ability to adhere strictly to the agreement that we have entered into. It is true that we have asked—you may put it in the form of a favor if you please—and in some cases we have insisted that the operators would not only recognize the United Mine Workers as a business institution, but that they would go one step farther and help us compel

463 the rebellious of our own ranks to be parties to this compact. Not for the benefit of the miners, but for the benefit of the miners and operators jointly. Now let us see how much farther this movement must go to be successful. As I understand it, it is for the purpose of wiping out competition between us and miners first, viewing it from our side of the question; next for the purpose of wiping out competition as between the operators in these four states. When we have succeeded in that and we have perfected an organization on both sides of this question, then, if I understand the real purpose of this outside of this competitive field who will do anything in any way endangering the peace that exists be-

tween us? What is necessary to do this? Organize our forces in the competing fields so far as the United Mine Workers are concerned. Go into these outside competing fields and tell your competitors that they have to join this movement whether they like it or not, and give stability to the coal business of the United States."

Mr. Drinker: So much of the proceedings as identify Mr. Lewis as the miners' international vice president.

From pages 591 and 592 of our record, from the joint convention proceedings of 1910, pages 65 and 66, remarks of Mr. Chapman.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "You made promises in 1898
464 that you have not kept. You may have tried to keep those promises, but you know what was said and what was done on the floor of the convention in 1898. I was a participant in it, as I had been in the preceding interstate movements. You know what the understanding was, and you know that at every session of every convention that has been held from that time down to the present we have asked you to carry out and make good on what you said you would do at that first conference. In my opinion the only way you can ever hope to succeed in putting the union fields on a competitive basis in cost with the non-union fields, the only way you can give your people more work and the other fellows less, is to reduce your wages to enable the operators to produce their coal at a cost that will enable them to take the trade. It can be done in no other way. You have tried the other process for 12 years and it has been a total failure; you are weaker now in the non-union fields than you ever were. They are producing more coal and increasing their output monthly and yearly, and it will only be a short time until the Ohio coal docks will be a thing of the past, the mines will be closed up and you without work in your own state."

Mr. Drinker: From page 593 of our record, from the same proceedings, page 105, remarks of Mr. Maurer.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Keep one thing in mind—keep
465 the facts staring you in the face that for two years your mines have laid idle while West Virginia non-union tonnage took the markets that belonged to you and to us. We stand next to those markets. In order to maintain our markets we on this side invested our money in the great Northwest and built docks to keep the market for you. That market today is in jeopardy on account of thhe competition from West Virginia. Tell me, tell me in fairness, is our position not right? Considering the last few years' experience, can you honestly ask for an advance in wages?"

Mr. Drinker: From page 593 of our record, from the same proceedings, page 122, remarks of Mr. Zerbe.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "A very considerable amount of censure and criticism has been put upon some operators who are here because of the fact that they have gone to West Virginia and found investments. I will remind the other side of the house that the men who have gone into Virginia are business men; they are engaged in the coal industry, and they bring the commodity from one state to another to furnish fuel for such contracts as they take. They have found by experience that you as an organized body are not treating them fairly where they are circumscribed in the production of this commodity. They find that you are putting upon burdens in the organized fields that do not exist in the unorganized fields.
By reason of the fact that you can not control in the
466 production of this commodity, although we can not control in the production of this commodity, although we are willing to admit you have made an effort, their market is being taken from them or restricted or narrowed, and many of them in self defense find it necessary, in order to carry out contracts and fulfill their obligations to those who take this commodity from them, to go to West Virginia and invest in properties there that they may continue a business for which they are obligated. I am not one who has done that, but I may [se]. They believe that at these intervals you will place their properties in the unionized sections in a position where they can not operate them, and as a result they go to the un-

organized fields an invest money and feel secure that under any conditions they can fulfill these obligations. The operators are not seeking to go there, but you are driving them there by your attitude toward the people who have been your best friends."

Mr. Drinker: From page 594 of our record, same proceedings, page 211, remarks of Secretary Perry.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "The price paid for mining in West Virginia is not only the cost of production. Those men have bills to pay that you do not, and you know it. It is not necessary that I should mention what they are. As a result of the organization trying to organize that field there is an added cost to the production of those operators. In my judg-
467 ment, as far as the unorganized fields are concerned, if the miners are paid an advance in the organized fields I do not believe it will be possible for the mines in West Virginia to operate and pay the present rate of wages."

Mr. Drinker: From page 595 of our record, the same proceedings, page 250, remarks of Mr. Chapman.

Mr. Warrum. The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Years ago we asked you, pleaded with you, to bring the non-union fields up to a scale of wages that would enable us to pay the scale you have asked for from time to time; and you promised to do it, but you have not done it, you have not kept the faith. We would be willing to pay the scale today and make the advance if you would put those people on a level with us in the cost of production. You know you can not do it. You have made efforts to do it, but you are farther away from the goal now than you were in 1898, and you are getting farther away every day. You know you can not enforce the scale of wages. In every district that you have attempted it you have practically lost out, and you are losing every day."

Mr. Drinker: From page 595 of our record, the same proceedings, page 251, remarks of Mr. Green.

Mr. Warrum: The same objection.

The Court: The same ruling.

468 To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "I do not propose to attempt to defend the non-union fields of West Virginia. I know, as do the miners on this side, that the non-union product of West Virginia is a serious proposition. As evidence that we recognize that fact, out of the meager earnings of the men on this side we have contributed month after month and year after year to try to organize that field and bring them up to a competitive basis with our friends on this side."

Mr. Drinker: We will offer so much of these convention proceedings of 1910 that identify Mr. Green as William Green, a defendant in this case, now Secretary-Treasurer of the International Union; Mr. Perry as the then Secretary-Treasurer of the International Union, and Messrs Maurer, Penna, Chapman and Zerbe as operators.

We next offer from page 605 of our record, from the miners' convention proceedings of 1910, page 115, remarks of Mr. McCullough.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "The first, principal and great need of our union is the organization of the non-union mine workers of this country. So long as the great army of non-union men remain outside of the organization they continue to be a menace and stand in the way of progress and advance-
469 ment of the organized mine workers."

Dr. Drinker: So much of those proceedings as identify Mr. McCullough as vice-president of the International organization.

Next from pages 1146 and 1147 of our record, miners' convention proceedings of 1911, pages 598 and 599, resolution 79.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "Resolution No. 79.

Columbus, Ohio, January 19, 1911.

To the 22nd Annual Convention, United Mine Workers of America:

Whereas, many strikes by the United Mine Workers of America have been inaugurated to obtain higher wages and better conditions of employment; and,

Whereas, many of those strikes have met with defeat, notwithstanding the justice of their cause, because of the fact that labor unions on the railroads, through lack of an understanding to lend their moral cooperation with every organization should give in time of conflict to each other, have aided the employers to defeat us in those strikes;"

Mr. Warrum: If the court please, the offer under consideration is the offer of a resolution in the convention of 1911, that the United Mine Workers seek an affiliation with seven different railroad organizations, engineers, firemen, conductors, trainmen, switchmen, telegraphers and maintenance of way men. These extracts seem to me to have no bearing on
470 anything, but this certainly is beyond the scope of any imaginable inquiry in this case.

The Court: It will be admitted.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): 'Therefore, be it

Resolved, that the incoming International Executive Board be authorized to seek an affiliation with the seven different railroad organizations, viz.: The engineers, firemen, conductors, trainmen, switchmen, telegraphers and maintenance of way, so that in time of industrial conflict between employers and employees of any of the above named organizations, including the United Mine Workers of America, all may join together for the purpose of aiding each other in carrying their strike to a successful conclusion.

THOMAS HAGGERTY,
Local Union No. 542.

The committee recommended concurrence in the resolution.

Delegate Feehan: I move that we concur in the report of the committee.

The motion to adopt the report of the committee was carried."

Mr. Drinker: From page 1147 of our records, miners' convention proceedings of 1911, page 60, "Sherman Anti-Trust Law."

Mr. Warrum: The defendants renew their objection for the reasons given in the objection to the last offer, as having nothing to do with this case.

The Court: The same ruling.

To which ruling and action of the court the defendants
471 at the time duly excepted and still except.

Mr. Lucas (reading): "Sherman Anti-Trust Law.

We have in this country a law known as the Sherman Anti-Trust Law. Its alleged object is to destroy trusts and to prohibit combinations that are inimical to the interest of the people.

We have no knowledge that the great industrial corporations have been limited in their authority to control certain commodities. There is no likelihood that the Standard Oil Company, the United States Steel Corporation, and other great industrial institutions will be dissolved by the enforcement of the provisions of the Sherman Anti-Trust Law.

This law, like others enacted for the alleged purpose of protecting the rights of the people, is in reality being used to deprive the wage earners of the right to organize. We know that the Sherman Anti-Trust Law, as well as many similar state laws, are being used to keep the mining industry from being elevated to a higher standard.

In my opinion the Sherman Anti-Trust Law and every other law of similar character, should be either amended or repealed, and instead of attempting to regulate corporations and trusts in the manner provided by the Sherman Law, the national and state governments should enact laws providing for a method of taxation that would remove any incentive for large corporations to accumulate wealth by illegitimate methods.

As laboring men, and especially as mine workers, we should lend every influence we possess to repeal those provisions of the Sherman Law that deprive us of our right to organ-
472 ize and establish the object for which we are united.

Now is the time to act as we may at any time be made the victims of a law that was enacted to control trusts but which is being diverted to destroy organized labor."

Mr. Drinker: Page 1110 of our record, from the joint convention proceedings of 1912, page 33, remarks of Mr. Hayes.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "I have had charge of the organizers during the past year, and we have made every possible effort at our command to spread the gospel of unionism into the non-union regions. The future looks bright. Today there is a splendid sentiment among all the non-union operators of the South in favor of this organization. I want the operators to realize that this organization is doing everything in its power to limit unjust competition. We believe in fair competition between operators, and I want to assure you that we are doing everything in our power to limit unjust competition. I understand that will be the basis of your argument in this conference, as it has always been."

Mr. Drinker: From page 598 of our record, joint proceedings of 1912, pages 40 and 41, remarks of Mr. Perry.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

473 Mr. Lucas (reading): "Secretary Perry read the following proposition:

Operators' Proposition.

The experience of the last two years under the present scale of wages and the losses sustained by reason of the wide difference between the prices paid in this competitive field and the non-union fields with which the product of our mines enters into direct competition, makes it imperative that some relief be given us.

Unless this situation is changed and some relief given, our tonnage will be still further reduced and our markets still further absorbed by these non-union fields, with a repetition of the financial losses for the next wage period that we have sustained during the present and a consequent loss of employment to the miners.

With this condition actually existing we have no recourse but to ask that the miners bear their part of the burden, and to meet this condition, grant us a substantial reduction.

We therefore propose a return to the 1904-06 scale of wages in the basing districts, with the right for the operators of the state of Indiana to ship mine run or screened lump regardless of which basis is used in paying the miner."

Mr. Drinker: From pages 602 and 603 and 604 and 605 of our record, from the same proceedings, pages 49 and 51, Mr. Penna.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants
474 at the time duly excepted and still except.

Mr. Lucas (reading): "The arguments indulged in here with reference to West Virginia—and I have heard that ever since I have known anything about mining coal in the United States. It has been the same old song always, the same old continuous cry that the miners can not advance farther in this competitive district with West Virginia where it is. It has lost none of its force by age. It is as forcible, or more so, today than it ever was, and the mine workers' union has always recognized that force. No matter what may be said here in this proceeding, the history of the past, the work that has been put in in West Virginia, the money that has been spent there and the continuous attempts on the part of the mine workers' union—with more or less zeal—is evidence of the fact that the mine workers' union recognizes that West Virginia is a drag on this competitive district.

It isn't any use for us for a minute to hoodwink ourselves or each other, or laugh at the idea of competition or attempt to minimize its effects, it is present and it must be reckoned with. The mine workers of West Virginia either do not want to be unionized, or the employers in West Virginia do not want them unionized, or both.

I am not going to attempt to explain why the men of West Virginia do not want to be unionized. That has never been clear to me; I don't understand it; but I can understand why the employers do not want them organized; and one of the chief reasons is because they see and know from public and private sources how the employers are treated in lo-
475 calities where the union is strong. And they properly conclude that it is cheaper by any method which they may see fit to adopt, by all the methods which they may see fit to adopt, it is cheaper to adopt those methods and pay the bills than it is to submit to the unionizing of their properties. They are properly afraid of what might be the consequences. They will read the reports of this meeting. They have of other meetings just like it. They see where we have talked of a desire to unionize West Virginia for only one purpose, namely, to exclude them from the markets in order that we may replace their product with ours. And hence they lay back and conclude, "We are going to take no chances. We have those markets and we are going to maintain them as long as can and encroach as much farther as we may.' They see reports of meetings of this kind and of the miners' demands. They read of the continual strikes and disputes and turmoils and violations of contracts in districts that are unionized, and they conclude it is cheaper to remain non-union, that it is more profitable after paying all their expenses, than it is to unionize."

"This year we have fallen off six million tons or thereabouts, approximately 33-1/3 per cent of our production, and while we were doing that in the 12 months of 1911 West Virginia increased practically twelve million tons in the same year, or nearly a million tons a month. Kentucky, on the south of us, increased her production. Ohio lost several million tons in her production last year as compared with 1910.

Now, that is our situation in this competitive field, and in view of such a situation it does not seem to me we can consider for a minute the payment of any advance in
476 prices. The argument is in favor of the opposite—the reduction demanded by the operators."

Mr. Drinker: An extract from the convention proceedings of the miners of 1910 from the report of Vice-President E. S. McCullough, found on page 605 of the former record.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Drinker (Reading):

"The first, principal and great need of our union is the organization of the non-union mine workers of this country. So long as the great army of non-union men remain outside of the organization they continue to be a menace and stand in the way of progress and advancement of the organized mine workers."

Mr. Drinker: From page 608 of our record, from the same proceedings, page 216, Mr. Penna.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (Reading): "You may be able to do as the gentleman over there suggested, you may be able to get all you are asking at the end of a strike; but that will not make it just. And if you do it will not be helpful to the men you represent any more than it will to those people over here. I believe every man on this side of the house is willing
477 to give just as much as the business will permit, in view of our surroundings. Organize those Virginians and organize those Kentuckians, organize central Pennsylvania and then move up together. Level up and then move, but don't keep moving the highest."

Mr. Drinker: Extracts from remarks of the same man on page 215 of the same proceedings, page 608 of our record.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (reading) "We are up against this competition, there is no use trying to get away from it. In your non-union fields your men work ten hours a day as a minimum and the maximum is unmentioned—anywhere from that
478 to twenty-five. For ten hours the day men get about a dollar and a half, and if they work 12 or 14 hours a day they may get a little more. I don't know whether they

do or not. The coal is weighed or measured, and our experience has usually been that when coal is measured in coal cars those cars seldom get any smaller. And you say you can not organize those people and their product goes in direct competition with ours. One reason you can not organize them is because they have certain methods to which to resort to prevent organization."

Mr. Drinker: From page 1118 of our record, the same proceedings, page 215, remarks of Mr. McDonald.

[The] Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "We have had men go to jail. We expect that more of us will go to jail. The penitentiary doors have no terrors for us, as for as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia we will send two or three hundred down. The chances are we will have to get busy with that situation shortly."

Mr. Drinker: From page 613, of our record, from the same proceedings on page 254, Mr. Walker.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "The places that are nearest
479 the non-union mines, of course, have got to be the ones really that are up against the strongest competition. They are the ones where the situation is the most serious—and I don't care whether you leave it as it is now, and we will say West Virginia and Kentucky are the worst places—if you will organize West Virginia and disorganize the fields that are organized now, the shoe will be simply put on the other foot. If you organize Kentucky and disorganize Indiana tomorrow morning the thing will be reversed and men from Kentucky can make the same argument you are making now. Until every mine is organized and joint agreement reached covering them that is fair that will be true. There is the place the shoe is going to pinch the tightest."

Mr. Drinker: From pages 613 and 614 of our record, joint convention proceedings of 1912, page 274, remarks of Mr. Chapman.

Mr. Warrum: The same objection.

The Court: The same ruling.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading): "When we met in Chicago in 1898 and reestablished the interstate movement the competition from non-union fields was the element, gentlemen, that entered into negotiations in the adoption of the scale that was made there. It was agreed to by both sides, and the question also of the ability of the miner to earn a fair day's wage for the labor he performed entered into it. At that time the miners were receiving 56 cents per ton for producing coal. I made motions in that convention that increased the day wage scale.

480 It was understood in that convention, although it was not placed in the agreement, that the miners of the competitive field of the four states were to bring the non-union fields up to the price paid for miners in those states, and unless they secured the adoption of an eight hour day at the next convention the competitive field was to be relieved of these burdens. That was not in the agreement. Unfortunately, gentlemen, the proceedings of that convention were not published. If they were published it would be found that the president of the United Mine Workers and the gentlemen who aided and assisted him in bringing about the results there agreed that they should be relieved."

Mr. Warrum: They are continually putting in these extracts, and there is no showing whether these men are miners or operators or what positions they occupy. If they continue to do that it will be necessary for us to encumber the record at a later time to show those things.

Mr. Drinker: At the end of each one of these offers I have identified everybody who has spoken. I didn't want to do it of my own mouth, because I didn't want to testify. It seemed to be more satisfactory to do it the other way.

The Court: If there is any controversy about it, the other side can say that is not the fact.

Mr. Drinker: In these proceedings, Mr. Hayes was the vice president of the miners' International organization; Mr. Perry was the secretary-treasurer of the miners; Mr. Penna

was an operator; Mr. McDonald was a miner's delegate; Mr. Walker was a miner's delegate; Mr. Chapman was an operator.

The Court: Very well.

Mr. Drinker: We read last from the statement of Mr. Chapman, an operator.

The Court: Very well. Proceed.

481 Mr. Drinker: Page 615, from the miners convention proceedings, 1912, page 32, report of President White.

Mr. Lucas: (reading)

"The importance of maintaining the Union in District 15 and securing a thorough and complete organization of the entire district scarcely needs any argument. The Miners of Montana, Wyoming and the Southwest realize its importance from a competitive standpoint".

Mr. Drinker: From page 615, from the United Mine Workers Journal of the 26th of September, 1912, page 6, column 1.

Mr. Lucas: (Reading)

"From Illinois".

Mr. Warrum: Just a minute, I would like to have an objection. This offer is from the Mine Workers Journal which is here in Court. The defendants separately object to the introduction in evidence of the document offered, for the reason that under the opinion and ruling of the Supreme Court it does not prove anything, and does not [through] any light on the issues, or the contention of the plaintiff in this case.

The Court: Proceed. Overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas (reading):

"From Illinois.

"Our Duty, To Help West Virginia.

Belleville, Ill., Sept. 19.

482 West Virginia has always been the barrier to our progress, a dagger in the heart of the United Mine Workers of America, by its unorganized conditions.

In every interstate joint conference between the Miner and Mine Owners the latter have raised West Virginia as the battle cry against our demands. The vast amount of non-union coal that is mined for practically nothing in that state has made inroads in the markets that rightfully belong to the central field to such an extent that we have reached the limit of our progress in the way of higher wages and better conditions. The east must be brought up! And if there ever was a time to withdraw that dagger from our hearts and forever wipe out that cry of "Cheap Coal" from West Virginia, that time is now.

ADOLPH GERMER."

Mr. Drinker: So much of the proceedings of the miners' convention of 1914, page 158, shows that Mr. Germer was a National Board member.

From the United Mine Workers Journal of the 15th of August, 1912, page 3, column 6. This extract I will read from the Pennsylvania record. The Journal is here, but I will read from page 906 of the record of the Pennsylvania Mining Company case.

Mr. Warrum: The defendants separately renew their objection.

The Court: Same ruling.

To which action and ruling of the Court the defendants at the time duly expected and still except.

Mr. Lucas: (Reading)

"The mines on Cabin Creek have been operated on the open shop plan since 1904, when the Miners Union in that
483 fall was destroyed. Since that year no effort has been made to organize the miners on that creek, but the coal operators in the adjoining organized field have complained bitterly against being forced by the miners to compete in the market with coal produced by the non-unon labor on Cabin Creek."

484 Mr. Drinker: From the United Mine Workers Journal of the 20th of February, 1913, page 4, column 1, the last sentence of the editorial page, by Vice-President Hayes.

Mr. Warrum: That is objected to for the reasons heretofore given, and for the further reason that whatever it is, it is improper to introduce one sentence out of an editorial which

will require all of it, to show the context and the meaning of the editorial.

The Court: Suppose you offer the entire editorial and read what you wish and they can read any that they wish.

Mr. Drinker: I did not think it was necessary to copy it all unless they wanted it

The Court: They may want it.

Mr. Drinker: I will read the last sentence:

"We will spend every cent in our International treasury and collect a million dollars or more by assessment, and tie up every nonunion mine in the country if that need be, in order to redress wrongs [—] the West Virginia miners, and in saying this I express not only my own views, but the views of President White and the entire International Executive Board."

Mr. Warrum: Now, I think the situation will develop that if extracts of that kind are read it will be necessary to introduce other articles and go into the situation that prevailed in West Virginia, and instead of the trial being shortened, unless we take it lying down instead of standing up, it will become a trial of West Virginia, and I don't think it ought to go to the Jury.

485 Mr. Drinker: That is the only one from there that I will read.

The Court: It may be that might mean one thing or another, but you will have to offer such evidence as you desire. This entire article was offered and you can read from any part of it.

Mr. Drinker: Now, from the Journal of the 2nd of October, 1913, Page 4, column 1. I said that was the only one, I think there is one more; I didn't see this one. It is by the same man, these two. This is another editorial from which I will read just the parts that I wish, but if my friend wishes I will offer the entire editorial.

Mr. Warrum: We renew our objection.

The Court: Very well, let the entire editorial go in. I think you had better offer the entire thing and read so much as you wish, and they can read the remainder.

Mr. Drinker: Very well.

"The Victory Will be Ours.

Accounts from the Colorado strike field indicate victory for the miners in the near future.

Financial support is being offered from all the organized districts and accepted in the spirit that it is tendered.

And, in furnishing funds for the striking miners the men in the organized fields are only indirectly helping themselves.

There are many improvements desired by miners in the central fields in the provisions of their contracts.

And, wherever the demands are made the miserable that obtain in the non-union field are quoted by the operators
486 as reasons why such improved conditions cannot be granted.

The Union miners who wish to advance their own conditions can no better serve to that end than by aiding the miners who have not yet secured the rights they enjoy.

Evidently this fact is well recognized, and, furthermore, we all are obligated to aid our fellowworkers who are struggling for better conditions of employment."

487 Mr. Drinker: From page 530 and 531 of our record, the remarks of Mr. Hayes on pages 85 and 86 of the Miners Convention Proceedings of 1914. It is the first three or four sentences, and the last sentence on page 531:

"Campaign in Non-Union Fields.

In compliance with the oft repeated desires of our members, we have, during the past two years, waged a vigorous campaign in the non-union fields. The organization of the non-union fields is one of our chief tasks and the culmination of the campaign we have started must and will result in the complete organization of the coal mining industry of the land. We must never rest content until this goal is achieved. Our chief hope of future preferment, better wages and better conditions, depends upon our success in the organization of these fields."

"With the endorsement of this convention and with your expressed determination to support and sustain the action of your International Officers in this work, we propose to carry on this campaign with renewed hope and vigor and will never cease our activities until the last remnant of non-unionism in the mining fields is forever removed."

Mr. Drinker: From the same proceedings, page 47, as found on page 1353 of the Pennsylvania Mining Company record, the remarks of President White.

Mr. Lucas: (Reading)

"In addition, active competition is keenly felt by both operators and miners, of Ohio, Western Pennsylvania and Indiana, the Southwest and many other well organized
488 fields, from the Non-Union sections of our country. This agreement would seem to enable us to prosecute a vigorous campaign in the Non-Union fields during the next two years.

This must be done as a matter of protection to the organized sections of our country everywhere."

489 Mr. Drinker: Page 620 of our record, the Miners Convention Proceedings of 1914, remarks of Mr. White.

Mr. Lucas: (Reading)

"You passed resolutions here yesterday favoring the policy of going into non-union fields. You adopted unanimously a resolution in behalf of our Kentucky brothers, to extend the organization there as soon as you can shape the course of our great movement so that it can be done; and I am longing for the time to come when the strikes that have taken our time and our money have subsided and we can enter the non-union fields, not only for the benefit of the Kentucky miners, but for the Illinois and Indiana miners and for others I might enumerate. The production of coal in the non-union fields is increased because of the conditions we create in our well organized fields; and then we make it doubly hard to go into these fields and organize them because we favor them with this increased production and they have taken our markets because they are on an unfair competitive basis."

Mr. Drinker: From the United Mine Workers Journal of August 27th, 1914, page 4, official notice.

Mr. Warrum: The same objection as to this class of testimony.

Mr. Drinker: I will offer the whole article, and read only a portion of it.

The Court: It may go in.

To which action and ruling of the court the defendants at the time duly excepted and still except.

490 Mr. Drinker: (Reading)

"Official Notice.

The efforts of the organized miners have resulted in better conditions even in the unorganized fields than did obtain prior to the time when we were able to establish our organization, but in times of industrial stress like the present, the operators of the non-union fields seriously threaten the markets of those with whom we make contracts.

Therefore, we maintain that we should feel proud, indeed of an organization that could and did maintain the rate of wages under such adverse conditions.

But, the operators with whom we have contracts have, or at least are entitled to certain advantages, and the chief of these is industrial peace."

Mr. Drinker: Now, that takes us to the southwest.

491 The Court: Have you those records here now?

Mr. Drinker: Some of them. I have only been able to go through three or four of these books, and I will offer the extracts I have from them now, and when the other books come tomorrow, of the Joint Proceedings of the Southwest, I will then offer them, but they will be from distinct books.

From the convention of District 21, held at McAlester, Oklahoma, November 9th, 1910, page 57, the remarks by delegate Conner, President Stewart and delegate Johnson.

Mr. Warrum: The defendants renew their objection to this class of testimony.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"Delegate Conners: The next resolution is from Bridgeport, Texas, and is as follows: "Bridgeport, Texas, November 7, 1910.—To the Annual Convention, District 21, U. M. W. of A., McAlester, Okla., Greeting: Whereas, the rapid development of the bituminous and lignite industries in the state of Texas is phenomenal in the history of the state; and whereas the unorganized condition of the mine workers in parts of the

bituminous and all of the lignite fields is becoming more and more a menace to our Organization, not only to Texas; therefore, be it resolved, that we request and urge upon you the importance of organizing the lignite and unorganized part
492 of the bituminous field of Texas, and especially the Jack and Young county fields of Texas. Submitted by Local Unions Nos. 787 and 2466."

The committee concurred in this resolution.

President Stewart: You have heard the reading of the resolution and the committee's report

Delegate Johnson: I move you that we concur in the committee's report:

The motion was duly seconded.

President Stewart: Are there any remarks? If not, I will put the question. All in favor of concurring in the committee's report will signify the same by saying "Aye". Contrary. "No".

The motion was carried and the resolution is adopted."

Mr. Drinker: From pages 18 and 19 of the proceedings of 1912, the convention of District 21 of the United Mine Workers of America, held at McAlester, Oklahoma, February 21st, 1912 being an extract from the report of president P. R. Stewart.

Mr. Warrum: The same objection.

The Court: Overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"There was a very important question which was submitted in my last report to the delegates, and endorsed, which was considered a very important question to the membership of our organization, which was as follows. "That the District Executive Board is hereby authorized to create a commission for the purpose of making a thorough in-
493 vestigation to ascertain recognized prices and conditions of employment in every mine now operating under the joint agreement to complete the records obtained as it applies to each field until a total record of same has been obtained from every section of our district; and further recommend the above commission prepare their report and sub-

mit the same to our next annual convention prior to the joint conference of operators and miners, and the District Executive Board confer with the officials of the Southwestern Coal Operators' Association to appoint a similar committee to co-operate with us in this work."

In accordance with the instructions of the convention, I immediately held a conference with President Elliott of the Southwestern Coal Operators' Association, and he agreed to bring the matter to the attention of the operators at their annual convention, and on April 3rd, 1911, at a meeting of the District Executive Board the District President was instructed to appoint J. D. Winters, or Montana, Ark., as our representative on said commission. I also tried to get the views of a large number of operators in our district on this question and all the small or independent operators seemed to be heartily in favor of the idea and agreed in nearly every instance with me that while it would cost a great deal to have all these records complied, it would be a great benefit to both parties in the settlement of disputes, and also in formulating our next joint wage agreement and put all operators on as nearly a competitive basis as possible in the different sections of our district. But my information was that the large coal companies of our district were not favorably impressed with
494 the idea, as they were afraid it might interfere with some of the conditions they had established in their mines and I understood at their annual convention they refused to co-operate with us in carrying out this joint agreement.

I also wrote the new elected President of the Coal Operators' Association, Chas. Keith, of the Central Coal and Coke Co., and he agreed to take it up with his Executive Board, but I understand they refused to agree to it."

Mr. Drinker: Page 125, from the same proceedings, the remarks of Mr. Green, who was the International Secretary-Treasurer.

Mr. Warrum: Same objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"I have frequently said, and will repeat it here now, and I would not hesitate to undertake the job and guarantee it would be carried to a successful culmination, that in this

year 1912, instead of having one-third of the members of our organization, we had every man in it that mines coal from the Gulf to [of] the Lakes and from the Atlantic to the Pacific, that I would guarantee to deliver to the mine workers of this country an increase of wages not less than 25 per cent., and a reduction in the hours of labor to six, and other improved conditions of employment. (Applause).

Mr. Drinker: From the further remarks of Mr. Green on page 127, beginning with the second sentence on the page and through the next paragraph.

495 Mr. Warrum: The same objection.

The Court: The same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"These thousands of men mine coal under these circumstances, and these are some of the non-union conditions to which I will not take time to refer, but I want to point out that these men are sending into the market their coal in competition with the miners of Ohio, Illinois, Western Pennsylvania, Indiana, and in many instances, because of mining coal under these non-union conditions, at such a cheap rate, they are taking the market away from our people, and we are feeling in the East very keenly the competition coming from these non-union fields, and we have to organize them if it does take men and money. The standard of the United Mine Workers of America must be established not only in West Virginia, but in every other non-union camp in order that protection might be given to the men who mine coal. (Applause).

And, I know, my friends, that you have had some similar experiences. You have the unorganized mines of southern Colorado; the coal that is mined by the unorganized mines in Alabama, and the other non-union sections surrounding the Southwest territory, and the coal that they mine is going into competition with the coal that you mine, and you men have begun to feel very keenly the competition with these non-union fields, supplemented by the discovery of oil and gas in this territory. I have noticed from the coal reports in 1910 that the State of Oklahoma decreased its production;
496 some of it, of course, was due to the strike that you had here, but not proportionately should the decrease in production be measured by the strike that took place in this field. A part of the decrease in proportion was due to the

keen competition from the non-union field of southern Colorado, and from the non-union fields of the South. All of this emphasizes only this one thing; that we have a great missionary work to do; that we have to carry the banner of unionism into these fields, no matter whether they do have thugs and guards and men who will assault our men and in every way possible attempt to keep the men who carry the doctrine of unionism there; regardless of this, the fact remains that our organization will be carried there; it must be carried there, and it will eventually be carried there and the banner of our organization established there just as firmly as in the other organized sections of this country. (Applause)."

Mr. Warrum: Is "Applause" part of his remarks?

Mr. Lucas: It is part of the printed record here as to what happened in the convention.

Mr. Drinker: Page 134 of the same proceedings, remarks of Mr. Hayes:

Mr. Lucas: (Reading)

"International Vice-President Hayes: Mr. Chairman, and Fellow Mine Workers; I am indeed pleased to have the opportunity of meeting with the delegates in District 21's convention. I came here to day as the representative of President White who is unable to be with you on ac-
497 count of very important engagements he [he] has elsewhere."

Mr. Drinker: From the same speech, by the same man, page 144, the middle of the page.

Mr. Lucas: (Reading)

"What every member in our organization needs is a thorough knowledge of the trade agreement system of settling wage differences, is an understanding of conditions all over this country; is an understanding of the non-union fields, and the competitive relations that enter into the protection of coal, and with that knowledge we can safely decide and thoroughly decide, with credit to our organization, with safety to our organization, upon a correct policy. In that way, we will protect the life of the organization. (Applause)."

Mr. Drinker: The last two sentences on page 146 of the same address by International Vice-President Hayes.

Mr. Lucas: (Reading)

"I want to assure you that the International union will give you its fullest co-operation and support in protecting the interests and rights of the membership of his field.

When we are called upon at any time we will hasten to your rescue, and do what we can to make the organization here in the Southwest second to none in our jurisdiction. (Applause)"

Mr. Drinker: From page 269 of the same volume, the last three sentences of the speech by delegate Sparling, who I believe at that time was a District Executive Board member,—is that right?

Mr. Warrum: I don't know.

Mr. Drinker: I will have to get the book. He testified
498 in the other case, and was then, but I don't know whether he was at the time of this convention or not. We will call him a delegate, and find out later.

Mr. Lucas: (Reading)

"So many promises have been made to the miners of Texas to organize the lignite field, and it has never been done. I know it is a hard proposition to organize them, and you people ought to realize that it is. We have promised the operators of the organized field time and time again that we will do this work, and every time we meet in contract convention, they tell us, you can better your own condition if you will go down there and do as you ought to do."

Mr. Drinker: Page 272 and 273, the remarks by Delegate Johnson from the same convention proceedings.

Mr. Warrum: The same objection.

The Court: Same ruling.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Lucas: (Reading)

"Delegate Johnson: Mr. Chairman and Brothers: As stated by Delegate Sparling a few years ago when he came back from Fort Smith and made the report that there was $20,000 set aside to organize the lignite miners of Texas, it is true that I made the remark that it amounted to nothing. We have for years and years come to these conventions asking the endorsement of the convention, and the district, in assisting us to organize the lignite fields of Texas, and they

have always passed some resolution. But that is as
499 far as it has gone. There has been nothing further.

Now, I want to make this statement to the delegates in this convention. That I believe I am as familiar with the conditions in that field as any man in the state of Texas today, that is working in the union mines. I have given considerable study to this situation. I have traveled through the biggest portion of the lignite fields, and also the unorganized portion of the bituminous field, and I believe that I know conditions that exist there thoroughly, and I want to state that it is certainly deplorable. The price paid for producing coal in the lignite mines varies from 26 cents a ton to 40 cents a ton. The day wage that is paid there is from $1.25 to $2.00 a day for 10 hours' work. The coal is sold at times, certain times of the year it sells at less than 75 cents a ton, and I have seen circulars quoting the coal F. O. B. on cars at 50 cents a ton. Again, in the fall of the year it sells as high as $1.50 a ton. The average price of the lignite coal in the state of Texas for 1910, according to the report of the Bureau of Mineralogy, is 96 cents a ton, The average price for the bituminous coal is $2.55, where the organized men work. The average price is $2.34 a ton. Now, it is easy to see that where this coal is produced, and loaded on cars at an average price of 96 cents a ton, that is a hardship to produce coal at $2.55 and compete with it, and the statistics I got from the Bureau of Mineralogy, I believe, will determine it. Now, in the year 1910 there were 13,200 and some odd tons less bituminous coal produced than there was in the year of 1909. Again the
production of lignite exceeded in the year 1910 the pro-
500 duction in 1909 by 262,000 tons. Now, that is the difference in the production. In the year 1911, the mines that I am working in worked 149 days, and that applied also to the mines at Lyra. The mines were working there practically steady. The coal as Brother Sparling stated, this lignite coal is shipped right through [out] town every day that I am not working in the mines, when I am home I can set and see lignite coal go past us, and it is produced some 200 miles away from us, and in some instances it goes some 200 miles west of us, and we cannot reach that market. There is on an average of two cars of lignite coal used in the county where I live, and was last summer, and I know that the company I am working for offered to put that coal in where this coal is used for $3.30 a ton delivered on the switch there, and they were told that they were not in it. You have to do better if you expect to secure a contract with them inasmuch as they could secure the lignite coal cheaper. This lignite coal that is shipped in there is shipped a distance of 200 miles."

Mr. Drinker: Another passage at the bottom of the same page.

Mr. Lucas: (Reading)

"As has been stated by the other delegates, and I believe our District President is familiar with this also, that every time that we meet our operators in conference at Fort Worth, Texas, to make an agreement, we are confronted with this proposition, "Why don't you organize the lignite miners? And unless you organize these men it is impossible for us to grant any further demands, and we cannot advance
501 your wages any further unless you do it." We have promised time and again that we would make some effort to organize those miners, and the only efforts that have been made is an investigation."

Mr. Drinker: Page 276 of the same volume, first sentence of the speech by President Stewart:

Mr. Lucas: (Reading)

"President Stewart: In regard to the lignite field in Texas there is no doubt of the competition of the lignite fields in Texas with the Texas mines, and the mines along the Rio Grand river in my opinion."

Mr. Drinker: From the special convention of May 18, 1914, of District 21, held at Fort Smith, extracts on pages 12, 15 and 16 from the speech of International President John P. White.

Mr. Warrum: The defendants renew their objection to this class of testimony, and for the further reason that according to the opinion of the Supreme Court that speech has no significance and does not [through] any light on this case.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Mr. Drinker: We will first offer from page 12.

"Now, a great many of you men realize how much the organization of Colorado is to the progress of the Southwest."

Page 15: "We cannot surrender the strike in Colorado. You men in the Southwest will appreciate more than any other class of men the establishment of the union in Colorado and New Mexico, for with the fall of Colorado, New Mexico must fall in line."

502 Page 16, the last sentence of the middle paragraph, and the first two sentences of the last paragraph.

"And after all of this great fight and numerous sacrifices that we have made we can congratulate ourselves on the progress we have made, and my sincere desire is to see our great organized districts free from industrial strife so we may establish the union in other fields that we have referred to, because any casual observer must know that in the strong organized districts we have about reached the end in our wage conditions unless we can bring about the organization of the unorganized fields.

You cannot keep this movement half slave and half free. The fight belongs to the organized miners to make."

Mr. Drinker: Now, that is the end, if your Honor please, for the present of this line of examination, until I get the other books.

Mr. Warrum: If that is all their direct examination as to these reports and proceedings, outside of District 21, we will prepare, during the noon hour, as well as we can, and do what we can and be prepared to cross-examine.

Mr. Drinker: Shall we offer a deposition now?

The Court: I believe you may.

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503 Mr. Drinker: We will offer the deposition of E. F. HACKETT, taken at Coal Creek, Tennessee.

(Reading)

Q. Your full name is E. F. Hackett? A. Yes, sir.
Q. Where do you live? A. Huntington, W. Virginia.
Q. What is your business? A. Mining Engineer.
Q. For whom do you work?
A. Walter W. Cunningham Co.
Q. What do they do? A. Consulting Engineers.
Q. What was your business in the spring of 1914?
A. Was with the Coronado Coal Company as electrician and engineer.
Q. How long had you been employed by them?
A. Well I think my last dealings with them was about eight months prior to that time.
Q. 1914? A. Yes sir.

Q. What were you doing in March of that year?
A. Working at No. 4 mine principally.
Q. What company operated that mine?
A. Coronado Coal Company.
Q. Operated No. 4? A. That was my understanding, yes.
Q. You ever see any leases and papers connected with the companys' operation?
504 A. No, sir.
Q. When you say that Coronado Coal Company operated No. 4 on what do you base that statement?
A. That was just my understanding. There were a number of interlocking companies Prairie Creek Coal Mining Company, Mammoth Vein Coal Company, Hartford Coal Company—
Q. In March 1914, toward the end of the month what events particularly impressed themselves upon you?
A. We installed electric lights around the mines, and was closed down.
Q. When?
A. During the latter part of March, don't remember the exact date.
Q. What else did you do?
A. Put up a wire rope, roped it off and posted notices.
Q. What kind of notices?
A. That none only employees would be allowed within the enclosure.
Q. When did you open up again?
A. I think about April 1st.
Q. When did you start to lift coal?
A. I think Saturday was the first day, about April 4th.
Q. Where were you on that day? A. At the mine.
Q. See any people around other than employes?
A. A few around outside of the ropes.
Q. Recognize any of them?
A. Didn't pay any particular attention.
Q. What did you do next day?
505 A. Went to the mines, I suppose I got there about 9 o'clock.
Q. Who was with you? A. I think Mr. Cameron.
Q. Who was he? A. General Superintendent.
Q. Where did you live? A. Middlin.
Q. How far from Prairie Creek No. 4? A. Three miles.
Q. Where did Mr. Cameron live?
A. Middlin, lived together.
Q. When you got there on the 5th what did you do?
A. Finished up with the wiring and lighting.

Q. See any people around other than the employees of the company? A. Yes, quite a few.
Q. Who? A. People from the community.
Q. Men or women? A. Both.
Q. Any former employees of the company there?
A. Some.
Q. What were they doing?
A. They were standing outside of the rope [hollowing].
Q. In what way? A. At the men that were working there.
Q. In what way?
A. Calling them scabs and so on.
506 Q. What else?
A. [Hollowing] calling them [(scans)] and jeering at them.
Q. Recognize any of them? A. I don't recall them now.
Q. How many men were used by the company at that time?
A. About 12 I think.
Q. You had twelve men in there? A. Yes sir.
Q. What were their names as far as you remember?
A. There was Looper, I don't remember his initials, Barns and Surrells, another one of the Loopers, I don't remember his initials.
Q. Were there any guards?
A. Burns was a guard and Bailey was there as a guard.
Q. You know somebody that worked [—] Looper?
A. Surrels.
Q. Anybody else work with him?
A. I don't recall the names right now.
Q. On the 5th day of April, any disturbance, any fight?
A. No, sir.
Q. What happened on the 6th of April?
A. On the 6th of April in the morning was not anything of any event until about ten o'clock there was a band of quite a large crowd, about seven hundred, headed by a band come from the direction of Hartford toward Prairie Creek school house, then later, about twelve or maybe a little later another bunch came from the direction of Huntington road headed by a band to the school house.
Q. How many in the Hartford crowd?
A. About seven hundred.
Q. In the Huntington crowd?
507 A. About the same amount.
Q. What time did they get to the school house?
A. About one o'clock.
Q. How long were they there? A. About two hours.
Q. What were they doing there?

A. Couldn't tell you was not there.
Q. What were you doing?
A. I was at the mines, looking after the electrical arrangement.
Q. Then what happened?
A. Mr. Cameron sent me word about the middle of the afternoon to come to the office that they had sent word down that they wanted to send a committee to talk to me, wanted me there when he received the committee.
Q. What did you do? A. Went to the office.
Q. Then what happened? A. Committee came down.
Q. Who were they? A. Howard, one of the Hoard's.
Q. You know his initials?
A. I think A. S., there is father and son.
Q. This the father or son? A. Son.
Q. Who else? A. John Manick.
Q. Who else? A Jim Slankard.
508 Q. Where did they come? A. To the office.
Q. Know if they were union men?
A. Supposed to be.
Q. What did they say there to you when they came to the office?
A. Came in the office and Mr. Howard said that they didn't want this to be a repitition of Colorado and that was about as far as he got with what he intended to say, I don't know what it was, the disturbance broke out on the outside.
Q. Did you see it? A. Part of it, yes.
Q. Where were you? A. In the office.
Q. How were you looking out?
A. Through the window.
Q. What did you see?
A. I saw the fighting between the two guards and the mob.
Q. Where were the guards?
A. Standing just in front of the office and to one side.
Q. East, West, north or south?
A. To my left facing the mines.
Q. Where were the guards with reference to the wire?
A. Ten to fifteen feet back of the wire.
Q. Inside? A. Yes, sir.
Q. On the company's property? A. Yes, sir.
Q. What did you see at that time?
509 A. I saw Mr. Barns go down, crowd on him, apparently on him, seemed to get up or half way up and borne down again.
Q. Barns have a gun? A. Yes, sir.
Q. What kind? A. Winchester.

Q. Fired off? A. No, sir.
Q. You see any disturbance with the other guard?
A. Saw him in the mob.
Q. Who was that? A. Bailey.
Q. What did you see with reference to him?
A. Couldn't tell very much about what happened any more than they were around him and seemed to be striking.
Q. How many of them were there around Bailey?
A. In the crowd, both of them, altogether about I would estimate 150 to 200.
Q. Then what happened to Bailey?
A. Bailey succeeded in getting out of the crowd and came to the side door of the office and we let him in.
Q. Who let him in?
A. Myself and John Patterson.
Q. Who was he?
A. Foreman, mine foreman.
Q. John Patterson, Sr. or Jr.? A. Junior.
Q. What condition was Bailey in at that time?
A. Had like a knife cut in one hand.
510 Q. Inside or out?
A. (Drawing the fingers of the left hand across the middle of the palm of the right hand.) I would not be sure if it was the right or left hand.
Q. What other marks have on him?
A. His face was pretty well covered with blood and seemed to have some cuts on his head after we examined him.
Q. You examine him? A. Yes, sir.
Q. What happened to Barns if you know?
A. Next I remember of seeing of Barns somebody had hold of him and took him out of the crowd.
Q. Where did they bring him?
A. Next time I saw him he was at the house where the guards stayed. I presume they took him there.
Q. What then happened?
A. Well the crowd went over to the mine, the whistle started to blow and the band [marked] in and played and some one went to the head frame and hoisted the American flag and placed a large banner up under it.
Q. What was written on the banner?
A. This is a Union Man's Country.
Q. Then what happened?
A. A crowd came back to the office, a part of them, the rest of them dispersed.
Q. Who was in the office at that time?
A Mr. Cameron, two Pattersons, Jr. and Sr., Mr. Argo,

Bailey and myself and I wouldn't be sure about Mr.
511 Thresher.

Q. Who were Mr. Argo and Mr. Thresher?

A. Bookkeepers.

Q. You say the crowd came around the building?

A. Came to the front door and pounded on that trying to get in.

Q. Locked? A. Yes, sir.

Q. Then what?

A. Going around and around the office and [hollowing] to come out or let them in, trying to get in.

Q. How long did they stay around there?

A. Must have been an hour, seemed that way to me.

Q. Then what happened?

A. Mr. Slankard came to the back door and asked to let him in and they let him in and he asked if we had a gun of any kind there and some one told him there was one lying on the floor in the corner under some papers and he took the gun and went off and made a talk to the parties on the outside and that dispersed them.

Q. Know whose gun it was?

A. No, sir, belonged to the office, I think.

Q. Fire it off at all? A. No, sir.

Q. Then what happened after that?

A. After the crowd left Mr. Cameron and I went to the mine head house boiler plant and examined things and went from there to the house where the guards lived.

Q. Then where did you go?

A. Fort Smith from there.

Q. From there?

512 A. Well I stayed in Fort Smith several days and then I went home.

Q. Where was your home?

A. Spiro, Oklahoma.

Q. Where did you go from there?

A. Back to Fort Smith.

Q. When did you come back?

A. Don't remember the exact date of going home, about a week.

Q. Where were you when the injunction was applied for?

A. At Fort Smith.

Q. You testify in that proceeding?

A. Yes, sir.

Q. Where did you go after it was granted?

A. I stayed there about one week, until it was granted and then came to Knoxville.

Q. Why? A. To get labor.

Q. You get any? A. Yes, sir.
Q. When was that?
A. First parties went out on, I believe the 7th or 8th of June.
Q. You know how many in that party? A. Four.
Q. Who were they?
A. Outside of the men with them?
Q. Who was with them? A. Eustice.
Q. What Eustice? A. Bud Eustice.
513 Q. Who else were in that party?
A. Two Thomas' and one other fellow here this morning, I don't remember—
Q. Suttles? A. Yes, sir.
Q. Then Suttles was in that crowd?
A. Yes, sir.
Q. See them yourself? A. Yes, sir.
Q. Hire them? A. No, sir, Mr. Eustice did.
Q. You tell them anything about the conditions at Fort Smith? A. Yes, sir.
Q. What did you tell them?
A. Strike on but we had a Federal Injunction and thought we would have federal protection in case of trouble.
Q. They went to Fort Smith with Eustice?
A. Yes, sir.
Q. What did you do, stay around here?
A. Knoxville and Oliver Springs.
Q. You got some more men?
A. Yes, Mr. Thomas got them for us.
Q. Thomas come back? A. Yes.
Q. When did he come back?
A. First of July.
Q. How long did he stay at Prairie Creek?
A. From the time he got there, take about two days to get there and two days to come back, little less than
514 thirty days, about three weeks.
Q. Got some more men? A. Yes, sir.
Q. You know who got Saunders?
A. I got him.
Q. Some others go on with Saunders?
A. Yes, bunch Mr. Thomas got up.
Q. Know who they were?
A. Part of them, yes.
Q. How many were they?
A. I think about 12 and four women.
Q. You go with them to Fort Smith?
A. Yes, to Mansfield.
Q. When did you get there?

A. About the 10th day of July, I believe it was.
Q. How long did you stay there?
A. I stayed at Prairie Creek one night.
Q. Then where did you go?
A. Muskogee.
Q. Where did you go on the night of the 16th and 17th and on the 17th?
A. On the night of the 16th in Muskogee and the 17th until one o'clock between Muskogee and Fort Smith.
Q. Didn't see the battle? A. No, sir.
Q. When you were in the office at that time and saw the crowd outside and the fight between the crowd and Bailey and Barns, did you recognize any people in the crowd other than Bailey and Barns? A. Yes, sir.
515 Q. You [make] within a few days afterwards a memorandum or notation of the persons you recognized at that time? A. Yes, sir.
Q. Have you got that? A. Yes sir.
Q. Will you look at that memorandum and give the names, not all the persons checked or noted on the memorandum, but persons of your own knowledge and memory of this minute, remember having seen in that crowd at this time? State after refreshing your memory the persons [when] you now remember seeing there at that time in that crowd?
A. All of these checked.
Q. The ones you remember seeing?
A. John Bumpas, Don Fitzgerald, W. P. Fitzgerald, Clint Burris, Fred Wooten, John Wooten, Jim Lee, Edward Davenport, Frank Canfelt, John Graham, Sid Shaw, Howard Shaw, J. W. Howard, A. S. Howard, John Mannick, Tom Rodden, Claude Carruth, Andy Kyle, J. H. Rodden, Marion Hulsey, Mage Hulsey, George Mannick, and Jim Slankard, that is all I remember of now, but that does not include all that is checked.
Q. What does that memorandum at which you are looking consist of?
A. Injunction that was issued by United States District Court, Western District of Arkansas, Fort Smith Division.
Q. Where are the names from which you have been reading stated in that? A. I think filed—
Q. I mean on the paper?
A. In the head of it.
Q. This said in the heading of the case as Plaintiff and defendants?
516 A. Defendants.
Q. What memorandum have you as to persons whom you saw there?

A. This is the only one now.
Q. What have you marked on the paper to show this?
A. Just a plain check mark.
Q. Across what persons?
A. Persons I have named.
Q. Are there any names checked on that list by you whose names you did not give as persons whom you now remember having seen in this disturbance on April 6th? A. Yes, sir.
Q. How many names have you checked on that list as indicated at the time you made the check that you saw those men there? A. 37.
Q. When did you make those check marks?
A. I made them right after the injunction was made permanent, or hearing was completed.
Q. Which? A. Right after the hearing was completed.
Q. On the permanent injunction? A. Yes, sir.

Cross-Examination

Mr. Warrum (reading):
Q. When was the permanent injunction granted and by whom? A. Granted by Judge Youmans.
Q. On what date?
A. I don't recall the exact date, in April.
Q. About how long after the 6th of April, referred to in your testimony?
517 A. About ten days, best of my recollection.
Q. Out of 1500 you picked out 37, no more and no less? A. No, sir.
Q. You made no note of it until fifteen or twenty days after you saw them?
A. No, sir, you are mistaken, made a note of it on the 6th of April.
Q. Going into the law business then were you not?
A. Not any more than now.
Q. That was your object in making a note of whom you saw? A. No, sir.
Q. What did you make a note of them for?
A. These people were inside of the enclosure on the company's property, why shouldn't I,—
Q. Did you meet Jim Slankard face to face?
A. Yes, sir.
Q. You were not molested?
A. No, sir, not by Mr. Slankard.
Q. Were you by anybody, you are testifying, were you by anybody? A. Didn't say I was.
Q. Why did you leave the inference that they would, Mr. Hackett?

A. I feel positively sure if I had gotten out of the Prairie Creek mine office, I would have been.

Q. Met old man John Bumpus? A. That day?

Q. Yes. A. No, sir.

Q. See him? A. Yes, sir.

518 Q. Where?

A. Old man Bumpus, you are mistaken young John Bumpus, both the same name, are they not?

Q. You live in that neighborhood you ought to know, are they?

A. I think they are, I think one is John and the other J. W.

Q. Now, Hackett, don't you know you fellows had old man John Bumpus over at Fort Smith, the man you have got checked here and that you obtained an injunction against him, and now you say you don't know if he was there or not, think it was his son?

A. I know the young Bumpus was there.

Q. What is his name?

A. First name I think is John.

Q. The crowd had not gone on the inside of the enclosure at all until Slankard appeared?

A. I think they were over the ropes, part of them, best of my recollection.

Q. The fellow that struck Barnes fell over the ropes?

A. I don't know.

Q. See Burns push him with his gun? A. No, sir.

Q. Didn't see the first? A. Not the start.

Q. See Riley Bailey, another guard, pushing the women and children around and when some fellow hit him?

A. No, sir.

Q. The same Rile Bailey was fined $100.00 for insulting a little girl going from school?

A. First I ever heard of it.

Q. You live there in Middlin?

519 A. I did prior to April 6th.

Q. You lived there afterwards?

A. No, sir, did not.

Q. When did you first learn you were going to close down?

A. I don't remember the exact date notices were posted.

Q. What notices?

A. Written notices posted at the mines?

Q. By the company? A. Yes, sir.

Q. Notices of what?

A. The mine would be closed down and resume operations upon the open shop basis.

Q. Was that on the day you closed down?

A. Best of my knowledge it was a few days before.

Q. By way of refreshing your memory wasn't it a fact those notices were put up the second day after you closed down? A. I couldn't say, sir, positively.

Q. The employees working in the mine at that time reported for work on the morning you closed down, didn't they?

A. I don't recall if they did or not.

Q. What did you make a note of them for?

A. These people were inside of the enclosure on the company's property, why shouldn't I, it was posted.

Q. You going to prosecute them?

A. I wasn't personally, but notices had been placed up and were placed up there warning people to stay out and natural assumption that the company would prosecute anybody that violated those notices, that was their right.

520 Q. Had you been instructed to make a note of persons who came on the premises? A. No, sir.

Q. Then it was not a part of your duty as an employee to do that, was voluntary on your part?

A. I considered it my duty, yes, sir.

Q. Could you name the 38 men that was there, you made it 37?

A. I suppose if I could I would have done it at the time.

Q. Let me see the paper from which you testified. When did you make these notations? (Pointing to the memorandum from which Mr. Hackett refreshed his memory.)

A. On that paper?

Q. That's what I am talking about?

A. After the injunction hearing was made permanent.

Q. This paper appears to be a printed writ of injunction, temporary writ of injunction issued on the 9th day of April, 1914, by Judge Jacob Trieber sitting by assignment, how many days after the 9th day of April was it that you made the notations on this paper?

A. It was a few days after a hearing for the permanent injunction.

Q. This same paper from which you testified shows that the matter of the application for a temporary injunction was to be held at the court house at Fort Smith on the 18th day of April, 1914, at 9:30 o'clock A. M., now when was the hearing had? A. I don't remember the exact date.

Q. But you do know that when you made the notations on this paper, was some days after the injunction was made permanent?

A. After the hearing for the permanent injunction.

521 Q. From whom did you receive this printed instrument from which you have been testifying?

A. I would not be positive, from United States Court of Coal Company's office. I believe I got it from Mr. Wellshear's office.

Q. This same paper from which you have been testifying contains the names of 67 defendants. Do you now say that you can't name any of the remaining defendants, I mean in addition to the 37 that you have checked on this list?

A. Probably name them, but not absolutely sure. I saw them and would not testify to them unless I was sure.

Q. Meet and talk to parties which you have given as being there on that occasion?

A. On different times, yes, sir.

Q. Did you on the 6th day of April meet them face to face and talk to them?

A. No, sir, don't think it would have been very good for me if I had met them face to face.

Q. What did Slankard [—] when he came in there and got the gun and went out of the office and went back out to where the crowd was gathered, what did he say to them?

A. Doors were closed, I don't know. I know they left.

Q. That was before anyone went in the enclosure?

A. No, sir, after it was all over, mob had gone in the plant and come back out.

Q. Who did you say sent for you to come to the office?

A. Johnny Cameron.

Q. Were you in the court house when Cameron testified in this injunction suit?

A. I might have been in the court house, I was not in
522 the court room.

Q. You say Slankard, after it was all over, went out and dispersed the crowd, after the crowd had taken the plant, hoisted the American flag and put up a sign?

A. Slankard was out there himself in part. Part of the crowd came back, the whole of the crowd came back, part of them stopped at the office and the rest went on home, or somewhere else.

Q. All breaking up when he came in and got the gun?

A. A part around the office didn't seem to be.

Q. If that is true why did you testify in the Court before Judge Euman in Fort Smith that Jim Slankard went out on the coal slack pile and said something, you didn't know what, and then the crowd broke over the enclosure and came on inside?

A. I testified to that and it is true.

Q. Then why do you say now that it was all over and none leaving when Slankard—

A. That was different time.

Q. Different time?
A. Some, I presume hour or hour and half later than he came and got the gun.
Q. Hour and a half later?
A. Might not been that long.
Q. Been in there before?
A. He had, yes, sir.
Q. You heard all that was said in the office between the Committee and Mr. Cameron on the 6th day of April?
A. I think I did, I might have missed some of it.
Q. Before you shut down you were making preparations to enclose it were you?
523 A. Yes, sir.
Q. How long had you been making preparations?
A. You mean—
Q. How long had you been making preparations to enclose the mine before you shut down?
A. Not been making any prior to that time.
Q. What did you say you were for? You said you were?
A. I answered that wrong. We were not making preparations prior to closing down.

The Court: Is that all of the cross-examination?

Mr. Warrum: Yes, sir.

Mr. Drinker: At the other trial I read some that was omitted, and I want to see whether I can omit it now.

The Court: Gentlemen of the jury, with the usual admonition you will be excused until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock P. M.)

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524 After Recess. 2 P. M.

The Court: Proceed with the trial.

Mr. Warrum: In order to economize time, I will ask that some of these extracts we will use on cross-examination may be considered read.

The Court: Very well.

Mr. Warrum: From the volume containing the proceedings of the mine workers' convention in 1903, I will read the following extract from the report of Vice President Lewis:

"After a bitter struggle the United Mine Workers have established a nucleus of an organization in West Virginia,

for the first time in that state, operators recognized the right of their employees to organize.

The work has only begun and I desire to reiterate what I said in my report of one year ago, 'That West Virginia can not be organized in a day or a month, and if we hope to organize that state permanently it must be by a steady and persistent effort.'

The men who will have charge of organizing West Virginia must be competent to do more than organize the mine workers of that state. They must be able to enlighten the mine workers as to the real purpose of seeking to induce them to become a part of our National Union.

Our organizers must be competent to meet the operators of West Virginia and discuss intelligently every phase of our present system of organization, explain its effects on the mining industry of that state, and also explain the relation of the operators of West Virginia will occupy with those of other states under organized conditions.

525 I found in all my travels in West Virginia that the operators of that state were fearful that in some manner we were attempting to organize that state in order to drive them out of business.

When the operators of the Kanawha Valley were convinced that they were mistaken as to the real object of our organization, there was not so much trouble in making settlements on a basis of no discrimination against union men.

I firmly believe that when the operators of West Virginia are better acquainted with the objects of the United Mine Workers of America, and the joint movement method of doing business by the operators and miners, and present opposition to the men of that state becoming members will vanish."

Mr. Warrum: From the annual convention of the United Mine Workers for 1904, and from the report of President Mitchell, on page 1045, I will read and ask to have considered read the following extracts:

"Before entering upon the subject matter of my report, permit me to express my feeling of very great pleasure at the presence here of so many representatives, and to voice the hope that this convention, like those that have preceded it, will be guided by wisdom and foresight, and that the result of our deliberations may redound to the advantage of the great cause we have the honor to serve. Participation in a convention

of this nature carries with it no small degree of responsibility. Committed to our care are the interests and the welfare
526 of a constituency whose number is legion. Our actions must be such as to fulfill their reasonable anticipation; our conduct must be such as to reflect credit upon ourselves and upon the whole trade union movement, of which we form so important a part. We should keep in mind the enemies of labor and the opponents of trade unionism, as Alliance, are ever ready to make capital out of the smallest indiscretion and to magnify out of all reasonable proportion the slightest mistake that trade unionists may make. We should be moderate in speech and conservative in action, though firm and insistent upon our rights as citizens and the recognition of our just demands.

Joint Conventions and Extension of the Trade Agreement.

At the close of our last annual convention, the representatives of Districts Nos. 5, 6, 8, 11 and 12 met in joint conference with the operators representing what is called the Central Competitive Coal Field, [comprasing] the states of Illinois, Indiana, Ohio and western part of Pennsylvania, for the purpose of formulaing a contract governing wages and conditions of employment for the scale year ending March 31, 1904. This conference lasted for ten days, and ended in an agreement whereby the scale for mining screened lump coal was advanced ten cents per ton, with a proportionate advance for mine run coal, dead work and day labor."

From the same exhibit, the same convention proceedings, the report of President Mitchell, on page 1046, I will ask that be considered read.

The Court: Very well.

(The portion referred to is in words and figures follow-
527 ing, to-wit:)

"West Virginia.

The joint conference method of adjusting wage differences and regulating the conduct of industry, which has proved so satisfactory wherever fairly applied, was extended into the state of West Virginia, and at the present time approximately 8,000 mine workers in the Kanawha district are working under a contract the terms of which provided for increased wages and a nin-hour workday. While the operators in the Fairmount district, the Norfolk and Western fields, and other parts of West Virginia still continue their unceasing hostility to our organization, I have every reason to believe that the time

is not far when the United Mine Workers of America will be officially recognized in this territory, and industrial peace will be established and secured, through the operation of the joint agreement.

Southwest.

By far the most important extension of the joint conference was that which resulted in the formulation of an agreement between the miners and operators of the states of Missouri, Kansas, Arkansas, and the Indian Territory.

For more than four years the operators producing about two-thirds of all coal mined in Missouri and Kansas and practically the entire output of Arkansas and the Indian Territory, had refused to enter into contractual relations with our organization, and had repelled every effort we made to adjust disputes by mediation, conference, or conciliation. It is, therefore, particularly gratifying to report the complete recognition of our union, a substantial increase in wages, and
528 the establishment of the eight hour workday in that field. The agreement secured provides a uniform scale for all classes of inside and outside day labor, including engineers, blacksmiths, firemen and carpenters; but what is of more importance is the fact that arrangements have been made for future conferences which promise a long period of industrial peace to the miners and operators of these districts."

Mr. Warrum: Now, from the mine workers' annual convention for 1906, from the report of President Mitchell, pages 53 and 54, that being in the record of the former cause at page 1048, I would like to have that considered read as part of the record.

The Court: Very well.

(Said extract from the record in the former trial is in words and figures following, to-wit:)

"Strikes.

I regret to report that during the past year the mining industry has not been entirely free from strikes, although they have been extremely few in or where employers have recognized our representatives and entered into contractual relations with us. And in no instance has a strike taken place in advance of which we have not made overtures for peace and exhausted every conciliatory measure at our command.

Colorado Strike.

In the states of Colorado and Utah and the territory of New Mexico, both union and non-union mine workers, unable longer to endure the hardships and impositions incident to their em-
ployment, and failing to obtain relief or even a hearing
529 from the representatives of the coal operators who control production in these states, were compelled to seek, through a strike, number in those districts or states in which our union is firmly established that redress which was denied them in their overtures and appeals prior to its inauguration. The strike in District 15, has been, and is, a source of heavy expense to our organization but our people was denied them in their overtures and appeals prior to its are standing firm, and much as we desire an amicable and honorable settlement, the uncompromising attitude of the companies leaves us no choice but to continue the contest until fair terms of settlement are reached or our people go down in defeat.

It has been the policy of your officers to maintain peaceful relations with the mine owners, adjusting all differences in the manner prescribed by our laws and the declaration of principles embodied in our constitution. We have sought to avert strikes whenever possible, but there are times and circumstances when the integrity of our organization and the interests committed to our care are so involved as to render it more honorable to strike than to accept employment upon conditions dictated solely by the operators; and while we may not succeed in every strike in which we are compelled to engage, yet is is always better to resist injustice than meekly to submit to it. To paraphrase the words of Tennyson, it is better to have resisted and lost than not have resisted at all."

Mr. Warrum: Also from the report of the mine workers' annual convention of 1906, from the report of the same officer, beginning on page 1048, I will ask that be considered as part
of the record.

530 The Court: Very well.

(Said extract from the former record is in words and figures following, to-wit:)

"In the opening paragraph of this report, reference was made to the obstacles we have encountered in the work of organization. Lest our language be misunderstood when we

speak of 'Open foes and professing friends', I desire, even at the risk of giving offense and inviting controversy, to say that we have been attacked from two sources which one would expect to be diametrically opposed.

First, we have had the intense opposition of the Parry-Post aggregation of union wreckers, who have antagonized every effort we have made to organize the non-union fields of the country, especially the Irwin, Connellsville and Meyersdela districts of Pennsylvania, the Georges Creek district of Maryland, the state of Colorado, and the two Virginias.

Second, we have been opposed with equal vigor,—although with different weapons—by an organization styling itself the Industrial Workers of the World and by its principal affiliated body, the Western Federation of Miners. The recognized [spokesman] of these organizations profess great solicitude for the welfare of the coal miners; they seek to convey the impression that the coal miners are so densely ignorant that they are unable to conduct their affairs or successfully to manage an organization of their own choice. Indeed, these self-constituted advisers, none of whom, to my knowledge, ever worked in a coal mine in his life and most of whom have made failures of the several organizations with which they
531 have been connected, justify their attacks upon us by saying that we made trade agreements which so tie the hands of our members as to render us unable to strike at any time during the year when conditions would seem propitious. They lose sight of the fact that if we had no agreements and were therefore at liberty to strike at our own sweet will, the operators would have precisely the same right. They could lock us out whenever trade was dull and the ultimate consequence would be that we and our employers would be in continuous conflict.

These men are evidently not familiar with the history of the mining movements or else they are not honest in their profession of friendship for us. It does not require a long memory to go back to the time when, to our sorrow, we followed the course which they advise us now to pursue. As a matter of fact, for more than half a century the coal miners of this country fought and supplicated for the right and privilege to determine, with their employers, the conditions under which work in the mines should be performed. As long as I can recollect, the coal miners have demanded that their wages, hours of labor, and conditions of employment should be mutually determined between themselves and the operators, and incorporated in a trade agreement for a given length of time;

and even at this moment the miners of the anthracite fields are bending every energy to place themselves in the position we now enjoy.

But these alleged friends are not satisfied with giving us the benefit of their gratuitous advice, they have sent their representatives into the organized districts in which we have wage contracts and have attempted, with some slight
532 success, to establish local branches of the Industrial Workers of the World; and this in spite of the fact that when this world-wide organization was first launched upon an unsuspecting public, it was proclaimed that its purpose was not to invade the already organized fields or transcend the jurisdiction of the established trade unions, but rather to bring within its benevolent fold the millions of unorganized and underpaid workers of our country.

It is not my purpose to attack or antagonize the legitimate functions of any organization that is formed for the betterment of mankind, but I do protest against the action of these men who, sailing under the flag of labor and friendship, would disrupt, if they could, the magnificent organization it has taken us so many years to build."

Mr. Warrum: Now from the mine workers' annual convention of 1908, page 1050 of the record, from the report of Vice-President Lewis, pages 57 and 58 thereof, I will read the following extract:

"West Virginia has over fifty thousand mine workers. A small section of the Tunnelton field and the Kanawha valley are the only places where the members of our craft are allowed to organize. On the West Virginia Central railroad, guards are employed to see that organizers are not allowed to get in communication with the mine workers. This is also true of the Fairmount, New River and Norfolk and Western districts. In some instances organizers are threatened with assault if they remain in those districts. This is also the condition in some parts of Kentucky, Tennessee, Alabama and notably true of southern Colorado.

533 There must be some mistaken connection existing as to the real object of our union, to prompt mine owners to violate the law, disregard all rules of civilized society when they hire thugs to assault the organizers, in order to prevent the mine workers from organizing. I am of the opinion that we must learn the real cause for this bitter antagonism and then try to remove it by winning the confidence of those op-

erators and convince them that they have been laboring under a wrong impression in regard to the mission of the United Mine Workers.

When threats and force are not effective in intimidating the organizer, the injunction is brought into use to complete the work of preventing the mine workers from organizing. The judiciary is made the medium through which the American laboring men are deprived of their legal rights. As citizens of this country we have a right as miners to demand and insist on having justice.

Mine Disasters.

The terrible mine disasters that have occurred in this country recenty have shocked the nation. The sacrifice of hundreds of lives has called vividly to the minds of the American people the dangerous occupation of the mine workers. Many are the suggestions being advanced by so-called experts and others as to the best method of protecting the lives of those working in the mines.

Remedial legislation in the form of more stringent laws is the basis of practically all the suggestions that have been offered.

Laws to increase the inspection force, to compel the daily inspection of mines by practical and competent miners, to provide sufficient ventilation to divide the air current in
534 a mine, to sprinkle dust often enough to make the dust harmless, to compel the use of safety lamps in mines generating fire damp, are all wise precautions when enacted into laws and rigidly enforced.

With the enactment of all those provisions it will not prevent the danger in the mine or lessen the possibility of those terrible calamities unless the thousands of impractical miners employed to work in the mines are taught to understand the dangers that surround them.

The United Mine Workers of America, in addition to being a labor union, organized to raise the standard of wages and protect our members in their rights as wage earners and citizens, is also an educational institution. The United Mine Workers is the only medium that a mine worker has to compel respect of the mining laws on the part of the operator. It is a well known fact that where the miners are best organized, the existing mining laws are the most strictly observed.

With no organization the individual miner who complains that the mining laws are not enforced is discharged. The

miner may know that he is in constant danger of death on account of the neglect of the mine owner, yet the same miner runs the risk of his life rather than lose his job. The miner is prevented from organizing by the intimidation of the operators. He is prevented from organizing by the injunction of a federal judge. He can not insist on the enforcement of the mining laws because he has no union to protect him. In the event of an explosion in a mine, under those conditions, I would ask in all seriousness, who is responsible for the loss of the miners' lives? This is a question that requires the
535 serious consideration of every miner and every citizen of this country.

It has been my privilege to assist in the formation of the United Mine Workers. I have seen our union grow from practically nothing to an organized force of more than three hundred thousand mine workers. I have seen the United Mine Workers weather many an industrial storm, and if we are but true to ourselves and the principles of the organization, there will be no doubt of the future and permanent success of the United Mine Workers."

Mr. Warrum: From the reconvening of the convention for the same year, pages 1052 and 1053, I will ask that they be considered read as part of the record the report of Secretary Wilson.

(Said extract from the former record is in words and figures following, to-wit:)

"Secretary Wilson read the following preamble of the report of the Scale Committee and Conference Committee:

Modern civilization and industrial development receives its greatest impetus from the production of coal. It is the general basis of manufacturing, transportation and artificial heat. Any condition that seriously disturbs the coal industry affects the entire community. No man, or set of men, co-partnership or corporation, can afford to create a condition, for light and transient reasons, that will stop the production of coal and paralyze the industries of our country. Such a course can only be defended upon the grounds that some great wrong is being perpetrated or some fundamental principle of human right invaded, for which a general stoppage of work is the only remedy.

536 Recognizing these truths, we have tried to adjust the differences existing between us and our employers by other means than strikes. Our present wage scale contracts

generally expire on March 31, 1908. On October 29, 1907, at our invitation, we met the representatives of the operators of the central competitive coal field, composed of western Pennsylvania, Ohio, Indiana and Illinois, for the purpose of trying to agree upon a date for holding an Interstate Joint Convention to consider and, if possible, adopt a scale of wages and conditions of employment for the ensuing wage scale period. On three different occasions since then we have met them for the same purpose. In all of these conferences the operators, with the exception of Indiana, have refused to agree to a date for such a conference either before or after the present scale expires on March 31. In addition to this we have telegraphed them naming a specific date, March 24, as a date for the conference, and that invitation, with the same exception, they have all declined. Under these circumstances we must either find some other means of settling our differences or stop work when our present contracts expire.

In Missouri, Kansas, Arkansas, Oklahoma and Texas, comprising what is known as the southwestern fields, we have contract with the coal operators by which we have agreed to meet them in joint conference to arrange a wage scale before the present one expires. A similar condition exists in central Pennsylvania, West Virginia, western Kentucky, Michigan, Iowa and Colorado. One of the prime reasons for the success which our organization has attained is that while we have contended for the best conditions possible to secure in
537 making a scale, when once it has been agreed to we have held it to be inviolable. We must not break these contracts now. For the foregoing reasons we recommend that the following policy be adopted:"

Mr. Warrum: From the mine workers annual convention of 1910, page 1054 of the former record, annual report of President Lewis, I will ask that it be regarded as read.

The Court: Very well.

(Said extract from the former record is in words and figures as follows, to-wit:)

"Our Right To Organize.

It has been stated and repeated many times that labor unions are here to stay. Let us put ourselves on record in the most positive manner, that so long as one employer insists on the right to combine with other employers to develop industry, accumulate wealth and buy labor at the cheapest rate, just that long will the mine workers insist on the right

to organize with his fellow mine worker to dictate the terms upon which we will sell our labor.

Let me here repeat and emphasize what I said several years ago. We live in an age of concerted effort. Action in every walk of life emanates from the combined energies of the many interested along certain lines. The individual to be successful cannot stand alone. He must cooperate with his fellow man or stand aside and be pronounced a failure.

We are brought more and more fully to realize the tremendous power of cooperation and the dependency of
538 individuals upon each other in every walk of life. Religious, educational and financial institutions have a new life, sprung into existence from united effort in their various fields of work and all having a bearing on the bed rock of human progress—Labor.

Notwithstanding the tremendous impulse given to every movement through unity of purpose, there are some men among employers of labor and controllers of finance, who would deny that unity of action among laboring people that they, themselves, exercise in their every day affairs.

They cry down organized effort among the laboring people under the false alarm of encroachment on 'Individual Liberty'. They arrogate to themselves to organize capital under the sacred name of 'Vested Rights'. The time is at hand to bring forcibly to the attention of this class of people that in an era of concerted effort, such as we have, there is no such thing as individual liberty among working people if we are denied the right to co-operate with each other to better our condition and secure a brighter future.

Capital has rights under the law, so has labor. Capital has a right to be invested through human agencies, either in dollar singly or in combination with millions of other dollars. So must the wage earner have a right to act singly or in conjunction with all his fellow laborers. This is not sentiment, but the statement of a condition that must be recognized. Capital and labor should cooperate and work together; but if there must be a struggle between dollars and men, then men should and must be triumphant.

539 **Why We Organize**

The status of the labor union must be explained, not from a charitable or sympathetic standpoint. It must be made clear that we have our existence legally and morally as

a matter of absolute right, not only to organize, but the right to accomplish the purpose for which we are united.

Few men today, even among the rankest enemies of labor unions, seriously question our right to organize, but there is a further right, i. e. the right to make the organization effective, or else its existence is a farce.

We, as mine workers, are organized for a specific purpose. Among the objects for which we are organized is to secure fair wages, better conditions of employment, shorter hours of labor, proper ventilation in the mines and an opportunity to educate ourselves and those depending upon us.

We mean by fair wages, that every man employed in a mine should receive a minimum of $3.00 per day for his labor. Better conditions of employment, means the use of every device that human energy and skill can place in the mine to improve the surroundings of those who delve in the bowels of the earth. Shorter hours of labor, for the reason that we can produce with an eight hour work day all the coal needed to meet the requirements of the nation annually in less than 225 days of each year. Proper ventilation, means a sufficient volume of air passing through the mines to protect the health of the mine workers and reduce to a minimum the danger encountered in mines generating fire damp. To educate ourselves, in order that we can become more intelligent and better fitted for the duties of citizenship.

540 Any attempt to enforce these demands, even along the most conservative lines in certain states, causes disagreements that sometimes result in strikes. When we are compelled to strike, we are accused of interfering with the rights of the employer, when in fact we are simply defending our own rights. In many instances when we attempt to defend our own rights, we are denounced as un-American.

Certain employers of labor who make vicious onslaughts upon labor unions would have us to believe that they have some source of strength and security outside of government regulation. When we present our claims to certain employers, we are told that we must respect individual liberty, or the right of every man to do whatsoever he pleases with his own, when he is acting within the limits of the law.

They seem to forget that rights, duties and obligations are mutual and that the right of individual liberty is a right in name only. There is no such thing as individual liberty in a civilized government. The government itself is only a com-

pact of individuals who become a part of it and who agree to do and not to do certain things specified by law. Every man who has become a part of the government has made a concession.

Let those who attack labor unions remember that the fundamental rule of a just government is that corporation and individuals can exercise, unrestricted, their vested rights in property, only to the extent that it will not injure the rights of others.

As members of labor unions, all we ask is equal opportunities before the law, and this we have a right to insist upon. This we will insist upon with all the power and intel-
541 ligence at our command. Let those corporations that are attempting to destroy labor unions remember that when driven too far, the mighty hosts of labor, by organized effort and the intelligent use of the franchise, can destroy the power of the corporation and make it harmless as a factor to enslave the wealth producer."

Mr. Warrum: Now, from the same convention report, and from the report of the same officer, I will ask there be considered read in evidence that portion appearing on pages 71 and 72 of the convention report, and pages 1056 and 1057 of the record of the former trial.

The Court: Very well.

(Said extract from the former record is in the words and figures following, to-wit:)

"In West Virginia and other southern coal producing states a firm conviction exists in the minds of many of the operators that it is our purpose to organize the miners of those states in order that the operators will be prevented from shipping coal West, and to that extent give the miners of the central competitive field more employment. I am not criticising those operators for their attitude, for the reason that men in our own ranks are responsible for the position of the operators.

It is unfortunate, but true, that we have officers and members of the United Mine Workers who have and are criticising the International officers for not organizing the miners of West Virginia. In Ohio the miners have been told that West Virginia should be organized in order that the Ohio miners could get more work. Men who make use of
542 such statements have no conception of the real object of the United Mine Workers or they are self-confessed

demagogues, in either event, they do the members of the organization a very great injury and have caused the United Mine Workers a needless expenditure of hundreds of thou sands of dollars.

Each and every mining district of the country has a market for its product that should be exclusively its own. In every instance such a market is limited. It is well known that it is impossible for the larger coal producing states to market their production within their own states. There is a general market for coal that no one mining district can hope to control. West Virginia can not market its coal production within the state. It must ship a part of its product East, Northwest or South. We should emphasize that the Southern states are entitled to an equal opportunity with every other mining district for their share of the general market either east, northwest or south. We should declare in the most emphatic manner that it is not our purpose to organize the non-union mining districts to curtail their coal production. We must convince the operators of those states that we are sincere in our position. We will then have removed the greatest obstacle in the way of organizing West Virginia and other states named.

The strike as a method of organizing has not proven a success. The enormous expenditure of funds and the tremendous waste of energy incident to industrial strife should be avoided. Our right to strike can never be surrendered, but it should be the very last resort and every other means exhausted before a suspension of work is ordered or takes place.

543 A large number of the miners are anxious and ready to organize, but lack of confidence in our ability to succeed cause them to be indifferent. Many of the operators are really not opposed to the organization, but are skeptical of our object and fear the result.

Let us appeal to the intelligence of the operator and miner in the non-union mining districts. Perfect frankness in stating our position and sincerity in carrying into effect our declarations will do much to establish that confidence necessary to success. The application of common sense should be the basis of the new method of promoting industrial peace in the mining regions."

Mr. Warrum: Now, from the annual convention proceedings of 1911, page 1058 of the record, from the report of Presi-

dent Lewis, I will ask that the portion appearing in the former record be considered as read:

The Court: Very well:

(Which said extract from the former record is in the words and figures following, to-wit:)

"Unorganized Mining Districts.

The all important problem confronting the United Mine Workers of America is, how can we organize the mine workers in the non-union districts and complete the work in those districts which are but partly organized? Costly and unsuccessful efforts have been made to organize the non-union districts through the medium of strikes.

The tremendous expenditures of the funds of the organization and the failure to organize the states south of
544 the Ohio River as well as Colorado, Maryland and a large section of Pennsylvania, should prompt us to investigate the cause of the hostile attitude and the bitterness shown toward the organization by many of the operators in the states named.

I have called attention in former reports to the fact that in West Virginia and other southern coal producing states, there is a firm conviction in the minds of a number of the operators that it is our purpose to organize the miners of those states in order to shut them out of the markets into which operators of organized districts ship coal. This is an unfortunate condition but is partly due to the action of a few of our own members in misrepresenting the facts and deceiving our members.

During the past year I assigned International Vice-President Hayes and Board Members Farrington, Watkins and Garner to visit the Norfolk and Western district and the Fairmount region of West Virginia to investigate and report the prospects of organizing that state. The reports submitted to me verified what I have known for years—that in certain non-union districts an organizer jeopardized his own life the instant he undertook to organize the miners.

My experience in West Virginia and other non-union states prompts me to believe that we should clearly define our position with reference to those states. We should declare in the most emphatic manner that it is not our purpose to organize the non-union mining districts to curtail their coal production. We should emphasize our position that every

non-union mining district of the country is entitled to
545 an equal opportunity with every other mining district to market the product of their mines.

Let us clearly define our position as organized mine workers. Let us then appeal to the intelligence of the operator and the miner in the non-union districts. If we desire to establish that confidence necessary to our success we should be perfectly frank in stating our position and we must be absolutely sincere in carrying into effect our declarations.

I have stated in former conventions, and I repeat again, that the application of common sense should be the basis of a new method of extending our organization into the non-union mining districts and to establish permanent industrial peace between the mine owners and the mine workers of the country."

Mr. Warrum: Now, from the same exhibit, the annual convention of 1911, I will ask that portion of the annual report of Vice-President Hayes, which appears on pages 1061 and 1062 of the former record, be considered read.

The Court: Very well.

(Said extract from the former record is in words and figures following, to-wit:)

"The Irwin Field Strike.

As one of a committee of five members of the International Executive Board I visited the Irwin strike district in Pennsylvania on May 19, and addressed meetings of strikers at Greensburg and Latrobe. Our visit to this field was necessarily brief on account of the International Executive Board being then in session at Indianapolis, having adjourned temporarily in order to send this committee to make a hurried investigation of the strike.

546 Upon our return to the Board meeting we explained the situation as we found it, along with a compilation of data secured from reliable men in the field. After a careful review of the situation the Board voted an endorsement of the strike. I shall not burden you with a detailed history of the causes of this strike; suffice it to say that there had been no organization in this field for many years that the men were absolutely at the mercy of their employers; that they had no check-weighman on the tipple, and consequently suffered a large reduction in their reputed mining rate on account of shortage in weight; that the hours of labor were unlimited; that practically no dead scale work existed; that

prices for narrow work were ridiculously low, and other grievances too numerous to mention.

In view of these conditions is it any wonder the Irwin field miners refused to longer enslave themselves and families? Is it any wonder they came out on strike with a firm determination to fight to the last for the establishment of the union and the inauguration of a new era based on justice and fair play?

And how bravely they have battled, these heroic strikers of the Irwin field! Through ten long, weary months they have carried the standard of unionism aloft, resolutely, unflinchingly—and even to the graves of sixteen of their comrades, both men and women, brutally and wantonly murdered by hired thugs and deputies, by moral perverts and ex-convicts, the paid assassins of the law protected, privileged few—through it all they have marched manfully and courageously with their eyes on the goal of industrial freedom, and their hearts responsive to the new born inspiration of a bet-
547 ter manhood, a nobler womanhood and a happier childhood for all their people.

Such qualities of unionism as exhibited by our striking brothers in the Irwin field challenges the admiration and commands the support of every man worthy of the name. There are, however, I regret to say, certain individuals, and especially two subsidized papers, one brazenly styling itself a labor paper, published at Pittsburgh, Pa., that have done their full share in discrediting the strike of the Irwin field miners. Their lying, venomous attacks are timed to the jingle of the silver of a Judas, and their dastardly, traitorous work ought to be evident to every intelligent member of our organization. But despite the work of these professional character assassins, with their servile sycophancy and desire to destroy the effectiveness of this strike, they have so far met with little or no success, and the men, with few exceptions, are standing firm and loyal to the cause, determined, with our support, to establish the United Mine Workers throughout the Irwin field.

Unorganized Mining Fields.

After the settlement of the Illinois strike I was assigned to West Virginia for the purpose of investigating conditions, hours of labor, wages paid, sentiment for or against the organization, etc.

I found that conditions in the sections visited were deplorable to say the least. For instance, the hours of labor were unlimited, ten hours being the minimum, and nobody know-

ing the maximum, the method of paying for mining was varied, some miners paid by the day, some by the car and some on long ton basis at ridiculously low figures. The
548 wages paid day laborers averaged about $1.50 per day. Company stores were in evidence in all places visited. The men must trade at these stores or lose their jobs. They are also compelled to contribute so much each pay for company physician as well as company hospital. They are paid once a month. The great majority of these non-union miners live in dilapidated shacks of two or three rooms, owned by the companies. Guards are also employed to keep these people in subjection."

Mr. Warrum: From the annual convention report for 1912, the report of Mr. Frank J. Hayes, which appears in the record of the former proceedings at pages 1063 and 1064, I will ask that be considered as read in evidence.

The Court: Very well.

(Said extract from the former record is in the words and figures following, to-wit:)

"Unorganized Mining Fields.

The problem of establishing the organization on a firm basis in the non-union mining fields is one that must always command our best thought and attention. The old saying that a chain is no stronger than its weakest link applies forcibly to our movement, and our future progress is largely dependent on our success in thoroughly unionizing the coal industry. We find the states of Virginia, West Virginia, Maryland, Kentucky, Tennessee and Alabama approximately 150,000 mine workers, the vast majority of whom are unorganized and utterly helpless in meeting the encroachments of organized wealth. It is interesting to note that a considerable
549 number of operators in these unorganized states seem to be laboring under the delusion that the establishment of the organization in their respective fields means the ruination of their properties and the enforced idleness of their mines, that it is a conspiracy engineered by northern miners to retard the legitimate growth of their trade, and probably, until we are successful in our efforts to organize these fields, or until they become more enlightened, they will continue to pay out vast sums of money each year to guards, detectives, and unscrupulous politicians for protection from this imaginary evil. In dealing with this proposition we have made it clear to both sides that it is not our intention to unionize these fields for the purpose of strangling competition

with the operators in the northern states, nor to establish prohibitive wages and conditions, viewed from a competitive standpoint, that will keep their product out of its most favorable market. It is needless to say that if we adopted such a short sighted policy it would act as a boomerang and would hit our cause and the men we organize harder than it would the operators, inasmuch as it would greatly limit the output of these fields, deprive the men of work and cause them more hardship than they now suffer. Such, of course, is not our intention, all reports and wild statements to the contrary notwithstanding, and in the making of any wage scale these economic facts must and will be taken into consideration. Every mining district in the coutry has a natural market and an inherent right to the same, and we are well aware of the peculiar, geographical location of those particular fields, and in dealing with this complex problem we fully realize
550 that we are face to face with a condition and not a theory, and we must meet it with reason and intelligence, and with the sincere desire to be constructive and not destructive, to build up and not to tear down, until, at least, in the evolution of things, now being hastened by intelligence, world wide discontent, universal cooperation shall supplant the present system of competition, with all its waste, brutality and utter disregard for the higher and nobler phases of our common life."

Mr. Warrum: Now, with reference to the joint conference proceedings, if the court please, in the former record at pages 1064 and 1065, is an extract showing the organization of the joint conference of miners and operators, the report of the credentials committee, the rules adopted, and the order of transacting business, which I will ask be considered as read into the record.

The Court: Very well.

(Which extract from the former proceedings is in words and figures following, to-wit:)

"Rules.

First. That the convention meet daily at 9 a. m. and 2 p. m. and adjourn at 12 m. and 5. p. m.

Second. Special meetings may be held, or evening sessions, if so desired.

Third. The miners' representatives shall occupy the right of the hall, and the operators, the left, facing the stage.

Fourth. That each state be allowed the same number of votes on the floor of house—four votes on behalf of the operators and four votes on behalf of the miners in each state.

Fifth. That no vote be declared carried unless upon
551 the affirmative vote of the miners and operators of each state. That upon all questions of mere procedure the ordinary rules of parliamentary procedure, as stated in any standard manual, shall be the rules of this convention; and that in no event shall the rule requiring unanimous vote on all main and principal questions be suspended. Main and principal questions mean all questions affecting the proposed scale and agreement.

Sixth. That each state represented in the convention have four operators and four miners on the scale committee to be appointed with the understanding that each state may have an alternative for each representative, who shall have all the privileges of the scale committee, but shall have no vote except in the absence of his principal.

Seventh. That sessions of the joint convention be open to the public except when otherwise ordered.

Eighth. That the use of tobacco be prohibited in the hall during the convention.

Report of Credentials Committee.

Your committee on Credentials begs leave to report the following entitled to seats and voice in this convention:

Operators		Miners
25	Pennsylvania	105
80	Ohio	128
(Bit.) 57	Indiana	105 (Bit.)
(Block) 10	Indiana	14 (Block)
181	Illinois	205
353	Total	557.

On motion the report of the committee was adopted."

552 Mr. Warrum: And also on page 1066, the miners' proposed scale or miners' demand in that convention, I ask to be considered as read.

The Court: Very well.

(Said extract from the former record is in words and figures following, to-wit:)

"Miners Proposed Scale.

First. We demand an absolute run-of-mine basis for the entire competitive field.

Second. That there be a flat differential of 7 cents per ton between pick and machine mining.

Third. That the pick price per ton in the Pittsburgh District, Hocking Valley, Ohio; Indiana, and the Grape Creek Vein of the Danville District of Illinois, shall remain the equivalent of the scale of April 1st, 1903 to April 1st, 1904.

Fourth. Amend last year's contract by striking out in Inside Day Wage Scale the words, 'Company men in long wall mines of Third Vein District, Northern Illinois, $2.36,' and inserting the words, 'Brushers in long wall mines $2.56.'

Fifth. All internal differences shall be referred to the districts affected for adjustment.

Sixth. That there be a uniform scale for Outside Day Labor in the competitive field."

Mr. Warrum: From the same proceedings, on pages 1066 and 1067 of the record, I ask there be considered read in evidence the debate and argument by Mr. Mitchell, the miner, who was President.

The Court: Very well.

553 (Said extract from the former record is in words and figures following, to-wit:)

Mr. Mitchell: Mr. Chairman and Gentlemen of the Convention: As a preface to the discussion of the specific matters submitted to the convention, I desire to take this occasion to speak briefly of the very cordial relationship that has existed between our respective organizations during the past several years. I desire also to express the earnest hope that that present relationship may be continued. I recall, a very few years ago, when we sought to adjust our relations by remaining apart, when we sought to establish peace by engaging in war. I remember, too, that when wages had been forced down so low that the miners were rather regarded as objects of charity, that the coal operators at that period were about to go into bankruptcy. I think the arrangement we have had during the past six or seven years, the contracts we have made and the wages we have received, have been to the mutual ad-

vantage of operators and miners alike. I think that the operators will agree with me when I say that they do not profit by paying low wages. I am free to confess that it is to me a strange philosophy that a reduction of wages will relieve an industrial depression. I cannot understand how less wages will relieve overproduction. To my mind the only way to relieve overproduction is by making it possible for people to consume; and the working man cannot purchase unless he has wages. A reduction in the price of mining means a reduction all around. If you reduce one industry it goes on, and on, and on, and finally the wages of all workers are reduced, for the purchasing power is cut off; and then you come back
554 and start over and over again; it is an endless repetition. It means that when wages go down the consuming power of the purchaser is curtailed, and all the citizens of our country are compelled to suffer, whether they be workers or capitalists.

Mr. Robbins has spoken of reduction in the Meyersdale Field of Pennsylvania, and of proposed reductions in the Fairmount region of West Virginia. I cannot agree that coal is being mined in the Meyersdale field for 55 cents a ton. It is true that the operators there are making a rate of 55 cents a ton but it is just as true that the miners are resisting, and they are right. Every year that we have met in these conventions we have heard the statement made that the reason the operators represented here could not comply with the scale of wages proposed with, the miners was the fact that they were meeting an unfair competition from the Fairmount District of West Virginia. And now it is said that the Fairmount operators propose a reduction of 25 cents a ton. Why that is more than the operators told us they got altogether. Why do the operators of the Fairmount District propose to reduce the rate of mining 25 cents a ton? Why, even, do they talk about it? Is it because of competition from Pittsburgh, Ohio, Indiana or Illinois? Against whom do they sell their coal? In competition with whom is their coal sold? Not with Meyersdale. I see that over a million tons of West Virginia coal, a considerable part from the Fairmount Field, went to Chicago last year. Certainly if trade conditons are such that reductions must be made, it is not because they believe that they have no advantage over their competitors in the Pittsburgh District or other parts of this competitive field.

555 Mr. Warrum: And from the same volume of the joint conference proceedings for 1904, I will ask there be considered read in evidence the argument and debate by Mr. W. B. Wilson, appearing on pages 1068 and 1069 of the

record in the former proceeding, including the first paragraph at the top of page 1069.

The Court: Very well.

(Said extract from the former proceedings is in words and figures following, to-wit:)

"We know that outside of the state of Ohio and the Pittsburgh District of Pennsylvania, practically all the coal mined in the United States is weighed and paid for upon a run-of-mine basis; and we expect to continue to demand a run-of-mine basis until we get it. We expect to keep everlastingly at it until we succeed. We favor run-of-mine because we believe it to be the only honest method of weighing and paying for the product of the miners' labor. We don't believe that it injures you. We don't believe it causes any one to suffer. And what cannot give you any unfair advantage, and what will not injure us, and that will not injure the public, is cer-'ainly a thing that we can with justice insist upon securing."

"Now, gentlemen, I want to speak to you of one reason why we ask for modification of the scale, and why we cannot agree with you that there should be a general reduction in the rate of mining. In times of industrial stagnation or depression the men who work for wages are compelled to suffer what amounts to a reduction of their earnings by reason of the fact that they are not permitted to work so steadily. Short time is equal to reduced wages, and as a consequence the
556 earning power and the purchasing power of a miner's wages is curtailed by the depression in the industry, even if he accepts no actual decrease in the amount he receives per day or per ton. If we accept a reduction in wages it doesn't mean that any more coal will be burned. What person is there that will buy one ton of coal if he receives it for 10 cents a ton less? I say not one ton of coal more will be burned if coal sells for ten cents a ton less. I am free to confess that 50 cents or a dollar a ton reduction might enable some person who cannot buy coal at the present rates to buy a small amount then. If we accept a reduction in wages, [them] it means that our purchasing power is reduced that much more. The cost of living during the past six or seven years has increased in proportion to the increase in our wages, and, inasmuch as it is not within your power, even if you had the inclination, to offer us a reduction in the cost of our living, we cannot see our way clear to accept the proposition which you make. We are not living too well now. We are living better than ever before, but we are not going

to return to the conditions that prevailed some years ago. The time will never come again, with our consent, at least, when the coal miners of this country will have to ask for charity when they are able to work, when they are willing to work, and when they are at work. We want these relations continued. We want you to be prosperous. We want to enjoy a reasonable degree of prosperity ourselves. We are free to say, we are glad to admit, that the conditions of our lives and our labor were never better; but we also propose to say and to insist that they are not too good yet. We ask you, gentlemen, not to insist upon a reduction in wages where it can do you no good, and can do us incalculable
557 injury. We ask you not to insist upon a part of our earnings in order to turn it over to the railroad companies. Let us go on as we are, making such modifications in our internal arrangements as seem necessary.

Let us try and restore the good times, if we can."

Mr. Warrum: I wish to read from the same joint conference proceedings a short paragraph extract from the argument made by Mr. Dolan, a miner, on page 1071:

"Our friend, Mr. Chapman, says if we are good citizens we will accept this reduction because we cannot control some fellows in West Virginia and Kentucky. Why don't Mr. Chapman and his associates who have more influence than we have try to control some of the operators who are making the bad citizens in this country? The coal operators can make presidents, senators and congressmen, they can make anything they want, only control those fellows that cut the price in the markets. They can do this if they want to. I have nothing more to say, only to make this point. I have said all I can previous to this time. Low wages, low prices for coal have never done any good for the operators and they haven't done any good for the miners and they haven't done any good for the business people of America. It has never made good citizens; on the contrary it has made bad ones, and we don't see any reason why we should be reduced."

Also that portion of the joint conference that shows the organization and the report of the committee and the agreement adopted, found on pages 1071 and 1072, I ask to be considered read.

The Court: Very well.

558 (Said extract from the former proceedings is in the words and figures following, to-wit:)

"The Joint Convention was called to order at 4 p. m., Mr. Kolsem in the chair.

Mr. Kolsem: Are you ready to vote upon the report of the Joint Scale Committee?

Mr. Mitchell: We are ready.

Mr. Kolsem: It has been moved and seconded that the report of the Scale Committee be adopted. That is the motion before the convention.

Secretary Wilson called the roll of states.

The Illinois operators voted in the affirmative.

Mr. Bogle: The Indiana Block operators vote 'Aye' on all except the clauses pertaining to mine run and screened coal in the state of Indiana. That matter they consider an internal question, and reserve the right to take it up in their state convention.

The operators of Ohio and Pennsylvania voted in the affirmative.

All the miners voted is the negative.

Mr. Kolsem: The motion is lost. What is the pleasure of the convention?

Mr. Robbins: I move that this Joint Convention adjourn sine die.

Mr. Mitchell: I second the motion.

Secretary Wilson began the roll call.

Mr. Mitchell: Mr. Chairman, we would like to have the roll call deferred for a few minutes. We would like to have the sub-scale Committee come forward for a short conference.

(After an absence of ten minutes the Sub-scale com-
559 mittee returned but made no report.)

The Secretary proceeded with the roll call. All the operators voted in the affirmative, all the miners voted in the affirmative.

Mr. Kolsem: The motion is carried. This convention now stands adjourned sine die."

Mr. Warrum: Now, in the joint conference proceedings of 1906, I will ask there be considered read in evidence the extracts from the argument of Mr. Mitchell, President of the

Mine Workers, which is found on page 1075 of the former record.

The Court: Very well.

(Said extract from the former record is in the words and figures following, towit:)

"As long as I have any recollection I have heard that old story, 'If you men will take a lower wage rate we will give you steadier work.' I don't think there is a miner in America that at some time has not been approached, either individually or in company with his fellows, with the alluring promise, 'If you will take lower wages you will get steadier work.' A few years ago the miners were foolishly taken in by such a promise. We don't want steady work. We know that steady work is impossible. We know that if coal was mined for absolutely nothing, if all our people were independent gentlemen who only mined coal for exercise, there would not be a pound more burned, not a ton more consumed; there would not be a day's more work for us if we were all paid $1 a ton, unless some of you people or some of our people want to make bonfires of it.

We agree with you that we should have our share of
560 the work and that you should have your proper share of the tonnage and trade. Let us see if you are not getting it. I am not aware that the districts doing business with us have not retained their trade. It may be true that in some districts, such as the Hocking Valley of Ohio, where the coal vein is rapidly exhausting, where the best veins of coal have long ago been exhausted, that tonnage is being diverted to other parts of Ohio and even to other states, but principally, I believe, to other districts of Ohio where there have been recent developments and where big and profitable veins of coal have been discovered. But the tonnage of the state of Ohio has not been increased. Indeed, it has continued its slow but steady development. It has not kept pace with West Virginia, and it is not expected that an old state will increase its product in the same proportion as a state where great veins of coal have been recently discovered and developed. West Virginia is in the course of development. Railroads are being built all through it; great and easily accessible veins of coal are being found and it is only natural that there should be immense development there. But even West Virginia has done very little better than the old state of Illinois, where they have the advantage of a 7 cent differential and where the wage rate, the tonnage price and the

conditions of employment are as favorable to the miners as they are in any state in the Union. The failure of Ohio to increase its tonnage in the same proportion as West Virginia may not be due to a lower mining rate there any more that the increase in Illinois can be attributed to a higher mining rate in that state."

Mr. Warrum: Also from the same joint conference
560a report the argument of Mr. Haskins preference to wage scale, and his answer to the argument of the operators, I ask considered read.

The Court: Very well.

(Which extract from the former proceedings is in words and figures following, to-wit:)

"Mr. Chapman talks about a reduction. Nobody knows better than Mr. Chapman what a reduction means in the coal industry. It means demoralization in the coal industry, and nobody knows better than he that the Ohio operators and the Ohio miners cannot possibly live under such conditions as he suggested here today. That very same gentleman in 1894, when we were working under a contract in Ohio which was to expire May 1, made the same statement then and the miners agreed to accept a 20 cent reduction, consented to have their wages reduced from 70 cents to 50 cents, [included] to do so by the same silvery voice you have heard here today. The result of that, my friends, every operator and miner in Ohio knows only too well. Accepting that reduction was one of the worst things the miners of Ohio ever did, for the gentlemen on the other side know very well we did not get as much work after accepting the reduction as we got before. If we had not gone through this experience we might be in a position where they could deceive us, but they cannot do so now.

At different places in Ohio it is no wonder the West Virginia coal is being sold, when the very gentlemen who complain so bitterly of the competition from West Virginia are responsible primarily for the introduction of the West Virginia coal into the Ohio markets when they were trying to compel the Ohio miners to accept reductions in their
561 wages. No one is more interested, I believe, than the Ohio miners in doing what they can to contribute to the permanency and success of this interstate movement. I am sure it is not our desire to return to the conditions which prevailed in 1894, 1895, 1896 and 1897. I am sure of another thing, and that is that the miners are not going to be responsible for a condition of that kind. It does seem to me, how-

ever, that the argument made by the gentlemen from Ohio, favoring a reduction of wages, together with the other proposition he submitted, is for just one purpose. It seems to me his aim to at least suggest or propose something that will have the effect of disrupting this movement."

Mr. Warrum: Also the argument of Mr. Mitchell appearing on page 1077 of the former record, and the miner's demands made at that joint conference of miners and operators found on page 1078 and concluding at the top of page 1079.

The Court: Very well.

(Said extracts from the former record are in the words and figures following, to-wit:)

"Mr. Mitchell: This convention has convened under what are possibly the most extraordinary circumstances that have ever prevailed in the industrial history of our country. When we adjourned more than six weeks ago it seemed to us, as it did to the entire people of our country, that a great industrial conflict was imminent. So far as I know, each of these forces made preparation for a great industrial strife. Fortunately, or unfortunately, as circumstances may develop, the President of our country intervened and advised that we make further effort to reconcile our differences. As a consequence of his intervention—
562 for which I believe the entire country feels grateful—we have met here today to again consider, not only our own personal and collective interests, but also the interests and welfare of this our common country. I have given to this situation as much thought, as much consideration, I presume as anyone here. I have reviewed in my own mind the causes which led to a separation six weeks ago, and I have tried as best I could to review this situation not so much as a matter, but rather as an official and a man charged with certain public responsibilities. And, gentlemen, after six weeks of thought and consideration, I am convinced beyond peradventure of doubt that the claims we made in this hall six weeks ago were founded upon facts and justice, and that the industrial prosperity of our country justifies the coal miners is asking that they shall receive at least a fair share of the profits that result from great industrial activity. I believe that the claims we made then have been confirmed by conditions since our adjournment. It may be that because of our surroundings, because of our invironment, because of our training and our special interest we are unable to view this situation impartially; but, as stated

in our resolution adopted some days ago, we are willing to meet with you who represent the ownership, or who are the owners of these mines, for the purpose of trying earnestly and conscientiously to adjust our differences. I take it for granted that the experience of the past eight years have satisfied even the most skeptical among you that annual or biennial agreements between you and us are much better for our mutual interests than the old method that prevailed years ago, when every year saw a strike or a lockout, a serious conflict
563 as to our different rights. I believe, gentlemen, that first we owe it to ourselves, that next we owe it to our country, to make the best effort that is within us to reach an agreement that will preserve and maintain industrial peace in the coal fields of this country. In order that there may be some concrete proposition before the convention for discussion, I desire to offer, on behalf of the miners, the scale of wages and conditions of employment proposed to us at our recent joint conference.

We demand:

First: A general advance of 12½ per cent over the present scale.

Second: To be paid on a run of mine basis, with a proper relative run of mine price for all the states covered by the contract.

Third: That the differential between pick and machine mining be 7 cents per ton.

Fourth: That a uniform outside day wage scale be established.

Fifth: That all yardage and deadwork be advanced 12½ per cent.

Sixth: That no body under sixteen years of age be employed in or around the mines.

Seventh: That our contract become effective April 1, 1906, and expire March 31, 1907.

Eighth: That eight hours' work from bank to bank shall constitute a day's work.

Ninth: That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours; that the men shall be paid for every hour thereafter by the hours for each hour or
564 fractional part thereof. If, for any reason, the regular routine work cannot be furnished the inside labor for a

portion of the first two hours, the operators may furnish other than regular labor for the unexpired time.

Tenth: That the check-off for the collection dues, initiation fees, fines and assessments levied by the United Mine Workers of America become a part of the Interstate Joint Agreement.

Eleventh: That internal differences in any of the states or districts, both as to prices and conditions, shall be referred to the states or districts affected for adjustment."

Mr. Warrum: I will read a short extract from the argument made by Mr. Walker, an Illinois miner at the same joint conference, on page 1079 of the record:

"There is another phase of the question, but I hardly like to discuss it here. Every time the operators of Illinois have been able, in a certain field, to force an advantage under certain conditions, when we attempted to have these things certified, we have been met with every argument that could be produced on competition from West Virginia, the Pittsburgh District—and I think they went in British Columbia and Canada to get places where coal was being produced cheaper than in that district. They have dodged the issue in every instance, and up to this time have maintained the advantage they gained at one time, because of certain conditions that existed, the main one being to come into the Joint Convention and have a scale made on a competitive basis. The operator got the advantage and he has retained it. Some operators
565 in that state did not care to enter the movement, and we made rates that placed them at a disadvantage. Since that time we have made rates that were right. You are responsible for our not being able to deal with these matters in an open and frank manner."

I wish to introduce in evidence without reading it at this time so much of the joint conference proceedings of the coal miners and operators of 1908 as will be found on pages 1080, 1081, 1082 and 1083 of the former record, which shows the organization of the meeting, its manner of doing business, the operators' demands, and those who were present.

The Court: Very well.

(The extracts from the former proceedings are in the words and figures following, to-wit:)

"Inter-State Convention
of 1908
Joint Conference
of
Coal Miners and Operators
of
Western Pennsylvania, Ohio
and Indiana
Held at
Toledo, Ohio

April 14-17, 1908.

Stenographic Report by Ella Shera Green,
Indianapolis, Ind.

Revised and Edited by F. S. Brooks, Secretary."

"Ohio.

Operators	83	Miners	128

Pennsylvania.

Operators	35	Miners	105

Indiana.

Bituminous	15	Miners Bituminous	31
Operators Block	2	Block	3

Illinois.

Operators	0	Miners	15
Total Operators	135	Total Miners,	282

G. W. SAVAGE, Chairman,
F. S. BROOKS, Secretary."

"Mr. Savage: I move that the rules of the former joint convention be the rules of this convention as reported by the committee.

(Second, voted on and carried)."

"Inter-State Agreement of 1908-10.

It is hereby agreed between the Operators' and Miners' representatives of Western Pennsylvania, Ohio and Indiana;

First: That the mining rates, day wage scale and general prices in existence in Western Pennsylvania, Ohio and Indiana in the year 1907 be reaffirmed:

Second: That internal differences both as to prices and conditions be referred for adjustment to the various districts affected:

Third: That the screen hereby adopted for the State of Ohio, Western Pennsylvania and the bituminous district of Indiana shall be uniform in size, six feet wide by twelve feet long, built of flat or akron-shaped bars of not less than
567 five eights of an inch surface, with one and one-fourth inches between bars, free from obstructions, and that such screen shall rest upon a sufficient number of bearings to hold the bars in proper position;

Fourth: That the Brick Coal District of Indiana may continue the use of the diamond screen of present size and pattern, with the privilege of run of mine coal, the mining prices of which shall be determined by the actual screenings;

Fifth: That the eight hour day of forty-eight hours of six days per week is hereby reaffirmed;

Sixth: That an eight hour day means eight hours' work in the mine at usual working places for all classes of inside day labor. This shall be exclusive of the time required in reaching such working places in the morning and departing from same at night.

Regarding drivers, they shall take their mules to and from the stables, and the time required in so doing shall not include any part of the days' labor, their work beginning when they reach the change at which they receive empty cars, but in no case shall the driver's time be docked while he is waiting for such cars at the point named;

Seventh: That when the men go into the mine in the morning they shall be entitled to two hours' pay whether or not the mine works the full two hours. But after the first two hours the men shall be paid for every hour thereafter by the hour, for each hour's work or fractional part thereof. If for any reason the regular routine work cannot be furnished the inside labor for a portion of the first two hours, the operators may furnish other than the regular labor for the unexpired time;

568 Eighth: That the term of this contract shall begin April 1st, 1908, and expire March 31st, 1910;

Ninth: That a general resumption of operations in Western Pennsylvania and Ohio (the mines in Indiana now being in operation) shall take place on Monday, April 20th, 1908;

Tenth: That the renewal of the mining rates, day wage scale and general prices existing in 1907 is on condition of the approval of a two years' contract by referendum vote of the United Mine Workers of America;

Resolved, by representatives of the Interstate Joint Conference, composed of the operators and miners of Western Pennsylvania, Ohio, and Indiana, that we condemn in the most vigorous and positive manner the practice of suspending the operation of mines, pending the investigation and adjustment of disputes arising under the terms of joint agreements in the various districts and sub-districts under the jurisdiction of this Interstate Movement; and we recommend that such provisions be agreed upon by the operators' and miners' Representatives in the various districts and sub-districts as will require the mine managers and mine workers to comply with the terms of the contract, and to adjust disputes without delay and without suspending the operation of mines.

This Interstate Joint Convention shall adjourn to meet in Interstate Convention on the first Tuesday in February, 1910, at 10 a. m. in the City of Toledo, Ohio.

Signed at Toledo, Ohio, April 17, 1908.

On behalf of Operators:

569 On behalf of Miners.

569 Pennsylvania.

Geo. W. Schluederberg — Francis Feehan
John H. Jones, — S. A. Whetzel

Ohio.

H. L. Chapman — Wm. Green
F. M. Osborne — G. W. Savage

Indiana

(Bituminous District.)

Indiana Bituminous Coal Operators' Association, By P. H. Penna
Jno. K. Siefert. — W. D. Van Horn
D. N. Curry

Indiana.

(Block Coal District.)

J. H. McClelland
W. J. Snyder, — Patrick Golden
John Fogg.

T. L. LEWIS,
President of U. M. W. of A.
I. B. Serbe, Chairman.
F. S. Brooks,
W. D. Ryan, Secretaries."

Mr. Warrum: Also from the same joint conference proceedings, page 1095 of the former record, I will read an extract from the debate and argument of Mr. Feehan, a miner:

"We are unwilling that the non-union operators and miners of West Virginia or of any other coal field shall set the standard of prices and the standard of living for the intelli-
570 gent operators and miners engaged in the mining industry in the states that are represented here. I believe that is the honest opinion of all of the operators who are present. It is unnecessary for me to refer to the fact that many of the operators who are represented here in this joint conference have interests in West Virginia and in other non-union coal fields whose products are going into the markets they are complaining of. It is true that they have contributed, with the other operators who are engaged in the industry in those states and districts, to keep the organization from obtaining a hold or becoming a factor in those fields of which they complain. If they will withdraw their objections to the establishment of the organization in those fields, I am sure they would not be confronted with those conditions, and we would be able to remove the evil in a very brief time. The practices resorted to by the non-union operators of West Virginia are un-American. If our organization were to adopt the anarchistic methods of the non-union operators, there would be a howl from the American public and we would be branded as an organization of Molly Maguires. We are not going to do that. It has not been our practice in the past, and we are not going to resort to the methods and practices the operators have been guilty of in those non-union fields to prevent organization among the mine workers."

Now, I wish to offer and have considered in the record without reading it aloud at this time, the extract from the argument or debate of President White at the same joint conference of miners and operators, found on page 1095.

The Court: Very well.

571 (Which extract from the record of the former trial is in words and figures following, towit:)

"I have a few figures over here at this end of the table and we will deal with them at the proper time. We intend to show you that the miners of West Virginia are not working full time, as many men here are led to believe. There may come a time during our deliberations when we will learn from discussion, from rubbing together of our ideas, that the operators in the central competitive field not only compete against each other and lower the selling price of coal, but in their desire to secure some other trade they have compelled in some instances the operators of West Virginia to reduce the selling pric in order to control the trade they had."

Mr. Warrum: I will read another extract from Mr. Feehan's remarks at that same joint conference, appearing on page 1096 of the former record:

"I said yesterday that the mine workers of Western Pennsylvania, Ohio and Indiana who were represented here, were not going to permit either the miners or the operators of West Virginia to set a scale of wages for them or a standard of living. We are unwilling to accept their prices or conditions, although I have reason to believe there is not so much material difference as some of you would try to make it appear. I am unwilling, however, that they should be referred to, or that their conditions of labor or prices should govern the working conditions or the prices of the mine workers of the districts here represented.

There is one point I want to bring out that has not been made clear, and that is the disadvantage the operators of Eastern Ohio are put to in competing for the markets against the operators who have interests in West Virginia, and that is the character of the veins. In West Virginia it is not uncommon thing to have them develop from six to ten feet of clean coal. There is no slate to remove; it is easily mined; it is a good grade of coal; it can find a market; and when you take into consideration the cost of producing a ton of that coal compared with the little five foot vein of coal in Eastern Ohio with its many impurities and its thick slate, and the Pittsburgh District, with its weak roof, where in many cases it is difficult to operate a machine, as well as many other natural disadvantages the operators have these advantages. Were it not for their advantages in cost of labor.

572

The cost of labor is not the important factor that is crowding the Eastern Ohio operators out of the market on the lakes or elsewhere. It is the natural disadvantages that is doing it. There is one advantage the operators in Eastern Ohio

have, and that is their geographical situation. They are nearer the lake markets and other markets, and I believe they have an advantage of from 15 to 25 cents a ton in freight rates. I understand that when the decision of the Interstate Commerce Commission goes into effect they will have even greater advantages in freight rates. It is fortunate for them that they have these advantages. Were it not for their advantages in the matter of freight rates I am positive that many of the veins of coal now being worked in Ohio and elsewhere would be abandoned, and they would wait until the big veins with the greater natural advantages in West Virginia were worked out before they would again operate there. These factors have not been seriously enough considered heretofore.

573 The conditions in West Virginia are not as bad for the mine workers as they have been pictured. As a result of not having any representatives on either the miners' or the operators' side they have been grossly misrepresented. In the Pittsburgh district at the present time there is a scarcity of labor; operators are advertising for men, and while that is true the miners will not leave West Virginia to come to the Pittsburgh District, but they are leaving the Pittsburgh District and going into West Virginia, and not many of them return. They find conditions there as good at least as they are in the other districts, and I do not believe we should be so harsh in our criticism of the operators or the mine workers of West Virginia. I do not believe the operators who are a part of this conference, and who also have large financial interests in the mining operations of West Virginia would resort to all of the Molly Maguire practices that are put into effect to beat organizers who are representing the United Mine Workers, or that they would do other things that are un-American and inhuman as well. Surely that cannot be true. I believe we should get away from West Virginia. Either leave them to take care of their own affairs in their own joint conference, or admit them as a part of this joint conference. If the operators are willing to do that I believe the miners will acquiesce. Then we will have the representatives of the operators and miners of that state to deny the misrepresentations that have been going on here since the conference convened."

Mr. Warrum: Now, from the same exhibit, page 1098
574 of the former record, I will read from the statement made by Mr. Savage, a miner, in the debate on the wage scale:

"—if you operators from Ohio and Pennsylvania will lend us the same assistance in West Virgina in getting the mining price up so that competition will not prevail. When we ask that what do we find? Operators have told me in years past that they were willing to have the miners organized in Ohio, but they were not willing that their miners should be organized in West Virginia. We find as great opposition on the part of the operators from the state who have mines in West Virginia as we find from the operators resident there. If we are going to work along the line of mutual benefit, let us make West Virginia a union state. Go down there and practice what you preach in Ohio. Help us get the protection of the law in that state and I think we can organize the miners. Instead of helping us, what have you done? You have done nothing but retard the progress of our organization in that state. The reason they have assigned to me for their attitude was that the calibre of the men employed in the mines of West Virginia was such that if they were organized it would be impossible to control them. I believe that a large percentage of those men are as intelligent as we are, and once they understand the benefits of the organization and the benefits of the contract we enter into, they will observe those contracts as religiously as the miners in Ohio, Pennsylvania, Indiana or any other state.

I can not understand how we are going to benefit ourselves or going to eliminate in any degree this keen competi-
575 tion we now complain of by reducing the miners' wages. If the conditions as they are painted in West Virginia, are true, if you were to reduce the wages in this state 10 cents a ton, or if you were able to force such a reduction on us, don't you think the operators in West Virginia would immediately reduce their miners again? Then would you not have the same competition? At one time we took a reduction voluntarily of 20 cents a ton. You said at that time if we would make the reduction it would improve conditions. I fail to find that it did so. I know on pay day when I went to the office to get my wages I had less money in my pay envelope with which to buy the necessities of life. That condidition prevailed for years, but we were finally able to get it back. We have got it now and we hope to retain those prices, and to get better prices, because we believe the more money we get the more money we will have to spend, and the better it will be for the interests of this country. Cheap labor here or anywhere else is not good for any government; it does not

produce business. We must have sufficient money to make good business. A great majority of the people are workingmen, and workingmen find it necessary to spend all the wages they get to maintain themselves and their families. That makes business. By reducing wages you will reduce our purchasing power."

Mr. Warrum: From the same exhibit page 1099 of the former record, the argument of Mr. McCullough, in answer to the operators:

"I listened the other day to the reading of the bill of rights as presented by the floor manager of the operators, Mr. Maurer. It was a beautifully prepared statement, and
576 I listened to it with great attention; but when he came to the last final appeal to the miners, it was, 'Place us on a competitive basis with the miners of West Virginia'. What does that mean? I believe the gentlemen from the other side of the house presented that with the same insincerity they believe we presented our demands. I wonder if anyone believes that by reducing the price of mining and coming on a competitive basis with the operators and miners of West Virginia, it would eliminate competition. No, my friends, the competition then would become more keen than it ever has been in the past, but it would be along another line. It would come then to this point and resolve itself to this proposition: That there would be a competitive struggle with the miners and the operators of the United States as to who could reach the level of the beast first. As we would go down in the wage scale, our invironments would naturally have to change to meet the change in conditions. The little fourteen by sixteen houses some of us live in would be made smaller, the cracks in them would become larger, the conditions of employment would become worse, and as the industrial environment would become worse, and as the industrial environment of the working class would become worse men would become that much nearer the level of the beast. We would go down, down, and there would be a fierce struggle to see who could produce coal the cheapest. If the miners of West Virginia could produce it cheaper we would be forced in self-preservation to go over the river and produce coal there. The operators would have to go into the same struggle.
They would have to give up their beautiful mansions,
577 their fine roadsters, their yachts, give up their luxuries, dispense with their high living, they would have to take their daughters and sons out of college, they would have to give up their social functions, put themselves on the level of

the miners and give their coal to this grand and glorious public we talk so much about, for nothing.

I do not believe the operators would compete along those lines, and I do not believe the miners would permit them to do so. We believe in doing all we can to rectify the wrongs that now exist between the different coal competing states. We believe in the operators in Virginia bringing up the standord of the miners there. If the operators would put their shoulders to the wheel and do what they could to make it possible for us to go over there and talk to them we might be able to do something with them. You may say, 'Oh, you may say we can do that now'. Are you not all members of the great political parties which control the politics of West Virginia? How many of you have appealed through the press of the country against the outrageous assaults and murders of our men? I have never seen a protest coming from you men in regard to the conduct of the operators in West Virginia when they hire men to kill our people, and where the law makers and the law executors of that state sit by and say nothing of the assaults and murders. If you men did half as much as we have done toward organizing West Virginia and making conditions better, I believe there would be a change in the coal industry of this country. But we are not going to compete the way your proposition presents itself; we are going to compete along those lines until first you have
578 wiped out every vestige of organization there is in this country, and then we are not going to do it. If it were done, from the ashes of the organization you destroyed would arise another organization more compact and powerful that would resist any such thing as that."

Mr. Warrum: I would like to introduce in the record, without reading at this time, that part of the proceedings of the interstate joint conference of miners and operators of 1912, relating to the organization and miners' demands, found in the former record on pages 1103, 1104, 1105 and part of 1106.

The Court: Very well.

(Which extract from the former record is in words and figures following, to-wit:)

"Proceedings

Interstate Joint Conference, 1912.
Coal Operators and Coal Miners
of
Western Pennsylvania, Ohio, Indiana
and Illinois.
Indianapolis, Indiana.
January 26 to February 1, 1912.
Cleveland, Ohio.
March 20 to 30, 1912.

Stenographic Report by Mrs. Mary Burke East,
Indianapolis, Indiana."

"Report of Committee on Credentials.
Indianapolis, Indiana, January 26, 1912.

579 The Credentials Committee met and elected Mr. Donaldson, of Pennsylvania, Chairman and Mr. Bittner, Secretary.

We recommend that eight representatives representing the Operators and Miners from each state, as named by secretaries of different states be seated as delegates to this Joint Conference, and that Mr. White be seated as an ex-officio member.

We recommend that each delegation can name any substitute at any time they desire.

Following is the list presented by the secretaries of the different states:

Western Pennsylvania Operators—W. K. Field, A. Donaldson, George W. Schleuderberg, John H. Jones, W. W. Keefer, James O'Neil, W. A. Luce, J. T. M. Stoneroad.

Western Pennsylvania Miners—Francis Feehan, Van Bittner, George Dagger, F. P. Hanaway, William Hargest, John O'Leary, Sidney Davis, James Charlton.

Ohio Operators—E. A. Cole, G. C. Weitzell, C. L. Cassingham, Edwin Jones, P. Y. Cox, Michael Gallagher, C. E. Maurer, S. H. Robbins.

Ohio Miners—John Moore, John Zelenka, G. W. Savage, T. L. Lewis, H. A. Lanning, George Cecil, John Saxton, Lee Hall.

Indiana Bituminous Operators—J. C. Kolsem, Hugh Shirkie, P. H. Penna, A. M. Ogle, David Ingle, H. B. Talley.

Indiana Block Operators—M. L. Gould, John H. McClelland.

Indiana Bituminous Miners—W. D. Van Horn, G. W. Lackey, Charles Fox, David Robb, Ed Wallace, George N. Jones.

Indiana Block Miners—James Holden, George Phillips.

580 Illinois Operators—H. N. Taylor, A. J. Moorshead, W. L. Schmick, O. L. Garrison, F. W. Lukins, Silas Shafer.

R. W. Ropiequet, John Reese (5th and 9th District.)

Illinois Miners—John H. Walker, Duncan McDonald, Groce Lawrence, James Lord, John W. Jarrard, William Hutton, James Shaw, Adolph F. Germer."

"Report of Scale Committee.

Whereas, The ever increasing and already too high cost of living without a corresponding increase in the wages of our members is making it not only impossible for our people to keep pace with the improvements in their standard of living that modern civilization makes necessary, and which they should have, but is making increasingly hard and bitter the struggle to get even the barest necessities of life, and

Whereas, The invention of labor saving machinery; the introduction of oil and gas as fuel; the utilization of electricity generated by our waterways and the prospective development of more and more of it as well as the greater efficiency of the modern organization and more highly skilled labor, are making necessary the long hours of labor on the part of the workers; and the especially dangerous nature of our calling, away from the light of day; isolated from all other human beings; surrounded by unknown and unknowable dangers; our health affected and our lives shortened by being compelled to inhale continually the deadly damp, poisonous gases and equally enervating and lung-befouling millions of particles of the always present dust and smoke, we believe that we are entitled to a substantial increase in our wages and that our work day should be minimized.

581 Miners Demands.

1. That all coal be [weighd] before being screened and paid for on the mine run basis and that the readjustment of the prices be made on the basis of the actual percentage of screenings as compared with lump coal.

2. That we demand a flat 10 cents per ton increase at the basing points.

All dead work shall be paid for.

3. Twenty per cent increase on all dead work, deficient work, yardage and day labor.

4. Uniform work day and wage scale for all classes of outside and inside day labor.

5. A proper readjustment of the machine differential at the basing point in Illinois, Indiana, Ohio and Western Pennsylvania.

6. That a uniform day of seven hours at the working place for all classes of inside labor be made the basis of the above scale, based on present prices.

7. That five hours constitute a day's work on Saturday.

8. We demand weekly payments. The coal companies shall not be permitted to have more than two weeks' wages held in their office at any one time.

9. We demand that there shall be no limit to the amount of deductions made through the companies' offices for the miners' organization.

10. We demand that there shall be no discrimination by the coal companies in the employment of mine workers on account of creed, color or nationality, or because of ac-
582 tivity in matters affecting the organization, and that every mine worker shall be given work in his turn when applying for same.

11. We demand that all local inequalities and internal differences be referred to the districts affected.

12. We demand that this contract shall be entered into for a period of two years, becoming effective April 1, 1912.

(Signed) JOHN P. WHITE, President,
FRANK J. HAYES, Vice-President.
EDWIN PERRY, Secretary-Treasurer."

Mr. Warrum: I would like also to have read into the record the remarks of Mr. McDonald, found on pages 1114 and 1115 of the former record, taken from the same joint conference proceedings.

The Court: Very well.

(Which extracts from the former proceedings is in the words and figures following, to-wit:)

"As one representative of the Illinois miners I want to reply to some statements made by Mr. Taylor with reference to our settlement over there. He says the sensible, sober-minded miners of Illinois admit they have made a mistake. I don't know whether Mr. Walker and myself can be considered in that class or not; but I want to say we have made absolutely no mistake in the settlement we made. The recent coal reports issued will convince you that Illinois has held its own, so far as work is concerned, with the balance of the coal producing states of this country. I have been looking it over in the last day or two.

I had occasion last summer to visit a number of the coal states, and away up in the State of Washington when
583 I was there in August two mines there were operating with some degree of regularity. The rest of them were closed down or running from two hours to two days a week. I met later some people from West Virginia, and they said they were doing practically nothing in that state. I had occasion a few days ago to be in attendance in a joint conference in West Virginia, in the Kanawha Valley, where we have some semblance of an organization, and the operators made the same complaints about competition that you are making here. I have heard operators in the state of Missouri say they could not sell their coal on account of competition from southern Illinois. It make a difference whose ox is gored; It is no fault of the miners when they are doing practically nothing. It is no fault of the miners in West Virginia that some of the non-union operators were shut down during the summer.

Referring again to the scale we established in Illinois.

There were certain inequalities we had complained of ever since we had a scale in Illinois. The operators of other parts of Illinois told us when we made the contract a year ago last spring that unless those inequalities were corrected they would refuse to make a contract with us again, that they were gradually being put out of the market and we had to correct evils in southwest Illinois and bring the mining rate up higher than it was in order to protect them. We knew that what they were saying was correct. The C. B. & Q. built a line down there, bought up the old Jacksonville road, and they haul more coal out of there because of favorable conditions and low mining price right up through other portions

of Illinois, than was coming out of any other part of the state.

584 For a number of years past we complained of the rate in southern Illinois, and operators who were not interested there complained with us; but of course when they went into their meetings, like good union men, they stood with the others. But as soon as they came out they said to us, 'You fellows have got to do something with the southern Illinois miners or we will be put out of business'. A former arbitrator who had decided the rate in that portion of the state had made the statement that as soon as southern Illinois had favorable railroad facilities the mining rate would have to be changed to protect the other parts of the state, and we did that.

We changed the mining rate in northern Illinois, where Mr. Taylor's mines are, because there was a larger per cent of lump coal produced there than in any other part of the state. If the mine run was originally based on a certain per cent of screenings which was figured out, about 12½ per cent as against 40 per cent in Danville, we were justified in making a demand there because of the conditions our men had to put up with in a thin seam of coal. I don't believe, so far as the mine run system in Illinois is concerned, there is an operator in that state who is seriously considering going back on a screened coal basis. I am sure the miners would not consider going back to a system under which, on pay day, all they had coming to them was a statement showing how much they were owing for house rent and groceries.

585 I happen to hear the operators of all the coal producing states express themselves in regard to competition, and every one of them will tell you the other fellow is putting him out of business. The fact remains, however, that the average number of days of operation, outside of certain favored sections of West Virginia, has been pretty uniform. And there are operators here who are interested in West Virginia—they are right in Ohio, Indiana, Illinois. I have thought several times it is a pretty handy thing for the operators to have West Virginia to hold up as an example to the miners. I think they are themselves the beneficiaries of the conditions in West Virginia. West Virginia is not unorganized because we want it unorganized; they are not mining coal in West Virginia under those conditions because we want them to; but it is because certain interests and powers beyond our control have been able to prevent us from changing conditions there."

Mr. Warrum: Also from the same joint conference proceedings, the remarks of President Lewis, of the mine workers, on pages 1116 and 1117.

The Court: Very well.

(Which said extract from the former record is in the words and figures following, to-wit:)

"When the operators proposed a reduction here I made up my mind at first that I would not say anything at all about it, for the reason that they know just as well as we do, regardless of what may be said to the contrary, that if we took a reduction of 30 cents a ton West Virginia would meet it.

When we had no interstate joint movement so far as
586 the Ohio miners were concerned, back in 1895 and 1896, the miners were starving and the operators were going into bankruptcy. The joint movement was the Godsend that saved them. But the joint movement instead of being extended, has been broken up several times for no other reason than that operators came in here and wanted to look after their own interests, as it applied to certain states; and the miners were willing to take the broadest view of the situation, say, 'We will throw her wide open and build a constructive scale from the bottom to the top.' I believe when we finally get through here we will have still left unsolved the problems that must be solved some way before we will have a permanent interstate joint movement, before we will be able to induce the operators of the southern field to become part of it.

If we go back through the history of the movement we will find the operators of the Central Competitive Field have voted against and talked against admitting anybody else except West Virginia and they would not admit the West Virginia miners unless the West Virginia operators were present, which was inconsistent on their part.

Reasons have been given for an advance in wages. I am not one of the representatives of the miners who believe that if we can get twenty cents a ton advance in wages the operators can simply go out and say to the customers, 'We want twenty cents or forty cents more for our coal.' I did believe; however, that if our demands were conceded by the operators and we were given an advance in wages the operators in the

non-union field would immediately concede the advance
587 to their employes. There is a reason for that. They do it in [odret] to keep their men there with them. As a matter of fact, the operators in the non-union fields had a

very strenuous time keeping enough men in their mines to operate their plants. They have agents out always, and after they get the men there they have a strenuous time protecting them from becoming organized. I believe there are just as good union men at heart working in the mines of West Virginia as anywhere else in this country. I believe the operators of West Virginia, or a number of them, would be willing to go into a joint movement if they were convinced that we were sincere, if they were convinced that the movement meant equity for everybody, and didn't mean shutting out of the markets the mine owners of the non-union districts. I make this statement because I have talked to non-union operators of West Virginia on this subject. That is their position, and anybody else who goes and talks to them will find it to be true.

We want an advance in wages because it is necessary for us to get an advance in order to meet our modest obligations. I believe this joint movement ought to go on record after we have reached an agreement to have the West Virginia operators and miners meet, not for the purpose of making an agreement—because if we told them that they would not meet us—but to draw up an agreement with them that we don't propose at this time to deprive them of what rightfully belongs to them in the market. West Virginia must market her coal either east or west, because she does not consume it at home. Our district in this interstate movement on the other hand, ought to have some natural advantages because
588 of the markets we have in our own states; but our method of doing business is even driving those markets under the control of non-union operators. We must sooner or later devise some plan to get away from that."

Mr. Warrum: Also the argument of Mr. McDonald at the same joint conference, on pages 1118 and 1119 of the former record.

The Court: Very well.

(Which said extracts from the former record are in the words and figures following, to-wit:)

"If you are really sincere in your fear of the competition from West Virginia I think you could join hands with us in two ways. You might first induce those in this movement to withdraw their opposition down there and help us to something with the political powers that prevent us from going there. I don't know of one instance on record where that has

been done by one local company or operators' association north of the Ohio River.

We have had men to go to jail. We expect that more of us will go to jail. The penitentiary doors have no terrors for us, as far as that is concerned. And if putting two or three hundred of our men in jail will organize West Virginia we will send two or three hundred down. The chances are we will have to get busy with that situation shortly.

The natural conditions in West Virginia are so much more favorable, the quality of the coal and the mining conditions are such that even if you had the same mining prices and conditions they have there is only one thing that would prevent them from taking your markets, and that would be the
589 long haul and increased freight rates. They can start a mine there and dig coal almost from the first day. The point that makes me sore is the fact that some companies meeting us in interstate convention, doing business with us in Indiana, Illinois and Ohio, will go across the border line of West Virginia, take advantage of conditions there and lend their assistance to keep the conditions as they are.

We will grant that in many places the men are able to make pretty good wages the days they work in the organized fields. We do not deny that. But what has been the situation in West Virginia the last few months? We have eight representatives from West Virginia here to attend our Policy Committee, and they say the work in West Virginia has been the poorest for the past two months they have had for years. If they are taking your markets by reason of these conditions, why are they not working steadily? These eight representatives tell me this winter's work is the poorest they have had for years and years. I don't know whether or not they are telling the truth, but I have no reason to doubt it. Even in the non-union districts the operators have been cutting their prices to such an extent they are not making anything.

Owing to the methods of producing coal today and the methods of handling it, if the miners of this country had a four hour work day they would produce all the coal there is any need for as a general proposition. Four hours a day is more than they have averaged for the past year as a general proposition, from the best information I can get, and I had
590 occasion to go through nearly all the coal producing states from Illinois to Washington last summer. They were doing no better in West Virginia. The miner must live, whether he works steadily or not, and the fact that he does

not get steady work brings down the average wage for the year. Even if he does make a good wage the days he works he has to live the rest of the days. The average wage per year is small.

So far as the competition of West Virginia is concerned, you people have about as much chance and could help about as much to eliminate that competition as we can if you would say to the concerns that are in the Interstate movement that they will either do business all over the country or they will not do business at all. And if you would use your influence with those politicians in West Virginia who have joined hands with the corporations to drive our men out of there and beat them up it might be of some help. In fact, I am inclined to believe it is a handy weapon for you to have every time we meet to be able to point out to West Virginia. There is no question that there are men sitting here who are doing business in West Virginia. It looks as though it is a mighty handy proposition to have.

Mr. Chairman, I have taken up this time merely because I wanted to reply to Mr. Penna's statement. The question before the house is that the last contract be renewed, with the same conditions, and that internal differences be referred to the various districts, with the provision that there be no increase in the price of coal. You have submitted a proposition that is as ridiculous as Mr. Taylor says the pro-
591 posed contract of Illinois is. We can make a good contract in Illinois if we are allowed to do so.

Now we ought to get down to business. If we are going to have a contract, let us get it. If it is advisable to adjourn the conference to a later date let us do so; but let us not sit here and bring up these questions that have no bearing on the case. I did not intend to say anything here and others who have spoken did not intend to, but we felt called upon to answer the statements that were made. Don't let us sit here another week waiting for the great lakes to open."

Mr. Warrum: I would also like to introduce in evidence without reading at this time the agreement entered into by the joint conference of April 25, 1912, showing exactly what they agreed to, and what was done at that conference, found on pages 1120 and 1121 and 1122.

The Court: Very well.

(Which extracts from the former proceedings are in the words and figures following, to-wit:)

"Agreement.

The United Mine Workers of America having voted to accept the agreement negotiated at Cleveland, the representatives of the miners and operators of the several states were called together as provided and met in Indianapolis, Ind., April 25th, 1912, and executed the following agreement, to-wit:

Interstate Agreement.

The following agreement, made and entered into this 30th day of March, 1912, covering the prices and conditions of mining in Western Pennsylvania, Ohio, Indiana and
592 Illinois, for the two years ending March 31, 1914, to-wit:

First. That the price of mining be increased five cents per ton on inch and a quarter screened lump coal, pick mining, in Western Pennsylvania thin vein, the Hocking, the basing district of Ohio, and both Block and Bituminous districts of Indiana; and three cents per ton on mine run coal, pick mining, in the Bituminous districts of Indiana and Illinois.

Second. That the price of machine mines be increased four cents per ton on screened lump coal in Western Pennsylvania thin vein, the Hocking, the basing district of Ohio; four cents per ton on screened lump coal in the Block and Bituminous district of Indiana, and three cents per ton on mine run coal in the Bituminous district of Indiana and Illinois.

Third. That internal differences be referred for adjustment to the various districts affected, it being understood that nothing shall be done in district or sub-district conventions that will increase the cost of production or reduce the earning capacity of the men.

Fourth. That the inside day wage scale shall be advanced 5.26 per cent, with the conditions of the Columbus Day Wage Scale of 1898.

Fifth. That all narrow, dead work and room turning and outside day labor shall be paid a proportionate advance with the picking mining rate, viz.: 5.26 per cent.

Sixth. That the screen hereby adopted for the state of Ohio, Western Pennsylvania and the Bituminous district of Indiana, shall be uniform in size, 6 feet wide by 12 feet long, built of flat or Akron shaped bar, of not less than 5/8
593 of an inch surface, with 1-1/4 inches between the bars, free from obstruction, and that such screen shall rest

upon a sufficient number of bearings to hold the bars in proper position.

Seventh. That the Block Coal District of Indiana may continue the use of the diamond bar screen, the screen to be 72 feet superficial area, of uniform size, and 1-1/4 inches between the bars, free from obstructions, and that such screen shall rest upon a sufficient number of bearings to hold the bars in proper position.

Eighth. The above scale is based on an eight hour day as defined by the Columbus Day Wage Scale of 1898.

Ninth. That there shall be no discrimination by the coal companies in the employment of mine workers on account of creed, color or nationality, or because of activities in matters affecting the organization.

For United Mine Workers:

Western Pennsylvania.
FRANCIS FEEHAN
VAN BITTNER
ROBERT WOOD

Ohio.
JOHN MOORE
J. W. SAVAGE.

Indiana.
Bituminous—
W. D. VAN HORN
CHAS. FOX.

Block—
594 LAWRENCE GARRIGUS
GEORGE PHILLIPS

Illinois.
J. H. WALKER
DUNCAN McDONALD

UNITED MINE WORKERS OF AMERICA
By John P. White, Pres.
Edwin Perry, Sec'y.

For Operators:
Western Pennsylvania
GEO. W. SCHLEUDERBERG
W. W. KEEFER

Ohio.
E. A. COLE
C. E. MAURER,
per M. D. Ratchford

Indiana.
BITUMINOUS COAL OPERATORS ASSN.
High Shirkie, Vice-Pres.
P. H. Penna, Sec'y.

Illinois.
ILLINOIS COAL OPERATORS ASSN.
By H. N. Taylor, Pres.
F. C. Honnold, Sec'y.
FIFTH AND NINTH DISTRICTS ASSN.
By R. W. Ropiequet, Pres.
Frank F. Tirre, Sec'y.
J. C. Kolsem, Chairman,

EDWIN PERRY, Secretary,
Of Joint Conference."

595 Mr. Warrum: I will read from the United Mine Workers Journal, issue of August 29th, 1912, an editorial entitled "Outside Influences in West Virginia", appearing on page 1127 of the record:

"The West Virginia operators are again voicing their ancient plea: That the dissatisfaction manifested by their employes is the result of agitation from outside sources, with a view of injuring the business of that state.

They do not explain how the business of the state is affected by the miserable conditions under which their employes are forced to drag out an existence. Those men and their families, under such conditions as are enjoyed by the miners, in parts of the country where they are organized, and therefore in position to demand decent living conditions, would indeed be a factor for prosperity in the state of West Virginia.

With the [antural] conditions that obtain there, the great veins of coal, accessible without first investing large sums of money for sinking shafts, the quality of the coal, insuring a ready demand, West Virginia can hold her own in the markets of the country without imposing on the poor fellows who dig the coal conditions that appeal and disgust every disinterested investigator that ever went into that field.

Is it not a shame and a disgrace to those men who reap the profit from these splendid natural conditions, and from the men who work for them, that the citizen soldiers, when sent into that field to protect life and property had to begin by restoring conditions for sanitation in these company owned camps?

596 Filth is a natural result of poverty. The normal man revolts from it. You can always find it where humanity is crushed and degraded below the normal. Men overworked and underpaid, which means underfed, crowded into shacks unfit to shelter cattle, with no encouragement or hope for better things; in such environment you may look in vain for the working man at his highest possibility.

Yes, we will admit that we advise men, under such conditions, to revolt. For selfish reasons, if you will. For men living under such conditions threaten civilization itself. Threaten the lives and health of the entire country. Threaten the moral health of the entire country. Threaten the business welfare of the entire community. The intellectual development of the community.

We court investigation by your governor, by any fair commission he may appoint. We appeal to the soldiers your governor has sent into the mining field.

Are we not right in advising men, under such conditions, to revolt?

What does it profit the great state of West Virginia if a few men, who generally live outside of that state, reap great profits, while they denude her of her splendid natural resources? And especially the greatest of her natural resources, her men and women.

Yes, we will aid those men when they revolt; will aid them with our advice and with what finances we can spare.

597 Because they are our fellow workers; because we have suffered as they now suffer. Because we realize that their lives often must pay for their lack of organization; for most of your terrible explosions could have been prevented if the miners could have collectively demanded remedies for conditions, the more experienced among them knew, could only end in disaster.

And when we have aided those men to a higher, better life; a better environment; a higher standard of living, every man in the state, business, professional man, working man, will

share in the fruits of the victory; will find that a corporatively prosperous working class is the primary cause of prosperity for all."

598 Mr. Warrum: And from the Mine Workers Journal, issue of October 3rd, 1912, an editorial marked "Both Wrong," found on page 1129 of the old record.

"Both Wrong.

"The Black Diamond, a magazine published in Chicago in the interest of the coal trade, is generally recognized as the mouth-piece of the coal operators of the central competitive field, the operators with whom the United Mine Workers have agreements.

"Its issue of September 28 contains an article on the strike situation in West Virginia, in which it calls on all operators to rally to the defense of the West Virginia operators.

"It says, in part:

" 'The statement was made a short time ago that if the miners' union succeeded in compelling West Virginia to pass under its yoke it would not be content with that victory alone, but would ask the newly unionized West Virginia field, together with the other unionized districts of the North, to support it while it went into a conquest of eastern Kentucky, and from there into Tennessee, and from there into all of the other States not now recognizing the union.

" 'At first this was merely a prophecy, based upon what is known of the eagerness of the miners' union to control all of the territory of the United States, and supported by information which we have been able to obtain from members of that union. However, the presence of the miners' union in eastern Kentucky is no longer a matter of prophecy; the union is already there.'

"Our reason for quoting the above is that the operators
599 of West Virginia are loudly voicing their belief that the strike in the Kanawha district is at the instigation of the very operators whose organs now comes forward demanding that the operators of the central field lend their moral and financial aid to defeat our purpose.

"That we intend to assist the miners of Kentucky, Tennessee and elsewhere to unite in an organization, affiliate with us, if they see fit to do so, we do not deny. That there need be

no further mystery as to our intention, we quote from our International constitution. In Article II, under the caption of "Objects," the first section reads as follows:

" 'To unite in one organization, regardless of creed, color, or nationality, all workmen eligible for membership, employed around coal mines, coal washers and coke ovens on the American continent.'

"Now, that's a big order, but at least it is specific; no need for conjecture here. We have stated our object and intention to the world.

"But that does not mean that it is for our own selfish interest, or for the aggrandizement of the organization that we stand ready to help our fellow workers.

"It is because they are our fellow workers, because they are oppressed, because we realize through our past experience that they can only obtain conditions leading to a higher, better life, by organization; because we know, if allowed the opportunity, they could gladly join with us, that we are ready and willing to lend them our aid that they may do so.

600 "We point to conditions under which no man should be forced to labor. To conditions that make for the deterioration of the race; yes, extinction of the race if persisted in.

"The operators cannot deny such conditions exist. They can only attack our motives. And it is to be expected that in attributing motives we never thought their assertions would conflict.

"On one side, the West Virginia operators state, "We are making the fight at the instigation of the operators in the organized field."

"On the other side, the Black Diamond, the spokesman for the union field operators, "We are fighting for more power for the organization."

"Both are wrong.

"We are helping these our brothers because they are our brothers; because we realize that the conditions imposd on them are dangerous to every citizen, every worker in this country; dangerous to the moral and physical health of the country; dangerous to civilization itself."

Mr. Warrum: Now, from the same Journal, February 20th, 1913, statement of Vice-President Hayes on the West Virginia situation, found on page 1131.

"The members of the miners' union in the strike field of West Virginia are in no way responsible for the anarchistic condition existing in that state at this time. The rioting was started by hired gunmen and guards for the purpose of influencing legislation against the miners and to secure the
601 adoption of a bill providing a state constabulary and other vicious measures now pending in the West Virginia legislature. The authorities seem more concerned about protecting the dividends of the slave-driving corporations than they do about dealing out justice to the men who produce the wealth of West Virginia. Hired sluggers and gunmen, better known as guards, have been terrorizing the miners and their families in this region for years. They employ the same method to keep out the organization as the criminals in New York employed in carrying on their nefarious work, and some of the so-called 'leading families' of West Virginia are contributing to these gunmen and sluggers for the purpose of keeping the miners of West Virginia in a state of absolute slavery. We have proof that many men are kept in the mines in the strike field under armed guard and are forced at the point of a gun to work in the mines; and, moreover, several of these men who were imported to the strike field under misrepresentation have been shot and brutally assaulted in attempting to escape from their industrial taskmasters. We have many affidavits in our possession proving the correctness of this claim, and at this time we have a resolution in the U. S. Congress calling for a federal investigation of conditions in the mining fields of West Virginia, and when this investigation is made we will prove that miners have been murdered for protesting against their wrongs; that their wives and daughters have been brutally maltreated and assaulted; that peonage exists, and that the constitutional guarantees of free speech and a free press do not exist in the non-union fields of West Virginia.

602 "Our organization deplores violence as a method for adjustment of labor disputes, and we have at no time advised our people to violate the law, but it is common knowledge that the gun and the club are the chief factors non-union coal operators employ to keep the miners in a state of servitude. Such conditions sooner or later are bound to produce the anarchistic state of affairs we now see in West Virginia.

"I am satisfied that Mother Jones and others who were arrested yesterday, charged with instigating the outbreak, had nothing to do with it, and that if it is possible for them to receive a fair trial they will be immediately released."

Mr. Warrum: Now, from the same Mine Workers Journal, September 18, 1913, an editorial of the West Virginia situation.

"Dark Conspiracy Revealed.

"With the hope of drawing the attention of the Senatorial commission from the lawless methods pursued by themselves and the responsible officials of the State of West Virginia during the strike on Paint Creek and Cabin Creek, the representatives of the operators are reiterating their silly charge 'that a conspiracy was entered into between the miners and operators of the central fields to provoke a strike in West Virginia; to organize that field and to establish a rate of pay for the miners there that would exclude the West Virginia coal from the general market.' And, to prove their charges they are introducing the arguments offered by operators and miners of the central States, in open conventions verbatim reports of which are published and can be obtained by almost anyone on request.

603 "Surely the discovery of this well-concealed plot must be one of the wonderful achievements of the Baldwin Feltz detective.

"It is true that the fact that West Virginia coal was competing with the coal marketed by the operators with whom we were trying to effect an agreement was often mentioned by those operators in our debates. Naturally, they would point to the advantages of cheaper rates of mining held by the West Virginia operators as a valid argument against increasing the rates of wages in the organized fields.

"Years ago, when contracts were entered into by states, independent of the rates that obtained in neighboring States, the conditions and prices that existed in Illinois were freely quoted, in conferences, by the operators of Indiana, and Indiana prices and conditions, by the Illinois operators, as reasons for refusing to raise our scale of pay, or more often, as reason for reducing the rate.

"And these arguments might have been construed by interested parties as conspiracies against the neighboring, competing, operators and miners.

"But we found in them only an argument for closer affiliation between the miners of each state; and so with West Virginia.

"If we organize all of the miners of West Virginia, as we have organized the great number of them, they, the miners of West Virginia, will still be interested in holding their share of the markets of the country.

"We hope to go forward, with West Virginia, to our
604 goal of better wages, and through that to a higher, better home life for all the workers in all the mines of the country.

"If it be a conspiracy to help our brothers in neighboring States to better their wages and conditions then it must also be a crime to organize the workers in the next mine; then every attempt to organize is a crime.

"But the benefit to the whole country, conceded to be the results of the organization of the workers are too well recognized.

"West Virginia will soon be as thoroughly organized as Illinois and Indiana, and when it is the operators of that State will wonder why they struggled so hard to prevent a condition that makes for peace and stability in the industry."

Mr. Warrum: Now, just three other articles. October 2nd, 1913, United Mine Workers Journal. This is on the Colorado situation referred to this morning; a short cross-examination of those articles in the Journal, referring to the Colorado situation.

October 2nd, 1913, on the first page:

"Colorado Strike"

Fully 95 per cent of men are out.

Settlements arranged with Many Independent Operators.

Trinidad, Colo., Sept. 28.

The strike situation here is very satisfactory to the miners.

The companies are making what showing they can with the few bosses, fire bosses, company store hands, etc, but not for a
605 minute are they deceiving anyone. The miners can count fully 95 per cent. of the men with them in this, the greatest and most complete strike ever known in Colorado.

At Sopris, where prior to the strike a meeting was held by the companies' creatures and notices sent broadcast that the men would refuse to strike, the percentage of men who came out are at least as large as the average.

The few men now at work will doubtless be out with their fellow workers in the next few days. Tents are coming in from West Virginia and the strikers' villages are reaching the proportions of cities.

Order prevails. Men and women are facing the necessary hardships without murmur, and union officials are striving to their uttermost to reduce such hardships to the minimum."

Mr. Warrum: I will next read, with reference to the Colorado strike referred to in the articles read this morning by plaintiff, from the Mine Workers Journal of October 9th, 1913, on the first page, first column.

"Colorado Strike

Many Independents Sign the Scale.

Work of Companies' Gunmen Proves Boomerang.

(By Frank J. Hayes.)

Trinidad, Colo., Oct. 4.

The state-wide strike in Colorado went into effect on September 23. Practically 95 per cent. of the mine workers of this State responded to the call.

The success of this strike has been a great surprise to the operators, who firmly predicted, before the strike was
605a called that not 15 per cent. of the men would respond.

A splendid spirit prevails in every mining camp in the State, and the men are standing loyally by the organization. The operators of practically every important coal mining State west of the Mississippi river, with the exception of Colorado, have recognized our union and granted us fair conditions of employment, and it goes without saying that we must spare no effort to enroll this State under the banner of the United Mine Workers of America.

We tried in various ways to organize this State in a peaceful manner, without resort to a strike. We extended the operators two invitations to meet with us in joint conference, and did not even receive the courtesy of a reply. In view of their failure to recognize the rights of the miners of this State, there was nothing left to do but to strike.

After our efforts to secure a joint conference failed, we called a convention of Colorado mine workers, to meet at Trinidad, Colo., on September 15. We also invited the operators to attend this convention, but they failed to appear. We then formulated our demands, which include recognition of the union; a 10 per cent. advance on tonnage rates; the Wyoming day wage scale; an eight-hour work day for all classes of labor; the right to trade at any store without discrimination and the abolition of the notorious and criminal guard system which has prevailed in Colorado for many years. In order to secure these demands the miners in convention assembled declared a strike.

The strike had only been on about ten days, and we have already signed up with about thirty small companies, se-
606 curing every one of the above demands, which has greatly encouraged our people ad placed our organization in a favorable position before the public. The people of Colorado are saying that if the small companies can recognize our union and grant our demands there is no reason why the large companies can not do likewise.

The independent operators of this State represent about one-half of the tonnage, and from present indications we expect to sign up with practically all of them in the near future. The main companies that are fighting us are the Colorado Fuel and Iron Company, the Victor-American Fuel Company and the Rocky Mountain Fuel Company. The last-named company has been fighting us in northern Colorado for the last three-and-one-half years with the avowed purpose of annihilating our organization in this State. They have also received the support of the other two large companies in their endeavor to accomplish this task. It is evident that they will fail in their efforts, as I am convinced that there is no power on earth that can destroy our movement in Colorado. This fight out here not only concerns Colorado, but practically every mining State in the West. If they can defeat us here they will, no doubt, try the same thing in the other western States, so our membership can readily see by this that we must stay on the job here until victory crowns our efforts. I have been in personal charge of the situation and here for about three months, and expect to remain in this field until success is assured.

The operators have placed about six hundred guards in this field for the purpose of [retaring] our cause and in-
607 timidating our people, but so far these guards have injured the cause of the operators more than they have

the cause of the miners. A great deal of shooting has occurred, and several "bloodless battles" have been staged by these imported gunmen for the express purpose of placing our organization in a bad light before the public. Their work has been so crude, however, that instead of making the public believe that we are a band of outlaws and anarchists they have convinced the people that they are the chief cause of all the violence that has occurred.

We have continually advised our people to conduct this strike on a high plane and to act at all times in a way that will command the respect of the public and the civil authorities."

Mr. Warrum: From the Mine Workers Journal, April 30th, 1914.

"Help the Men and Women of Colorado.

Indianapolis, Ind., April 25, 1914.

To the Officers and Members of the United Mine Workers of America:

Brothers: the climax to outrages perpetrated upon the striking mine workers, and their families in Colorado was reached on last Monday, April 20. On that date a number of gunmen and coal company guards with several machine guns fired upon the miners' tent colony at Ludlow, Colo., with deadly effect.

As a result more than twenty-five were killed, two-thirds of whom were women and children. The tents were set on fire and the whole colony was completely wiped out. The bodies of many of these killed were burned in the ruins. No darker crime or fouler deed was ever recorded in history.

608 The rules of civilized warfare protect women and children, but in this instance it seems inhuman monsters operating deadly machine guns, with fiendish glee, slaughtered the innocents.

It is a horrible crime. As the shocking details become known, we wonder how such a thing is possible. This blot upon the State of Colorado can never be wiped out. We have appealed to the President of the United States, the Governor of Colorado and the members of Congress. We ask you to do likewise. Hold protest meetings; adopt resolutions, not only requesting your congressmen and senators from your respective states to do that which will stop these awful crimes, but demand that they act immediately. We will do all within our power to protect the rights of our members in Colorado

and if possible bring about the termination of these wrongs and the punishment of those who are guilty thereof.

The situation is critical. The best service you can render is with your money. We urge local unions who are in arrears for assessment to send the same to our office promptly. The Colorado strikers and their families need your help, especially at this time. Their homes are burned; their wives and children killed. What greater sacrifice can human beings make? Will you help them by sending in your assessment, so we can rebuild their homes, bury the dead and feed the men, women and children who still remain?

Call meetings as early as possible, adopt resolutions of protest, send them to your congressmen, the President of the United States and the Senators from your respective
609 States, demanding that your fellow workers in Colorado be protected from the coal company assassins who are killing them.

JOHN P. WHITE, President.
FRANK J. HAYES,
Vice-President.
WM. GREEN,
Secretary-Treasurer."

Mr. Warrum: Now, from the Mine Workers' Journal of May 14th, 1914, the article headed

"Gunmen Fired Tents

And Slew Children in Planned Massacre.

"Conditions which are so terrible that they are unbelievable were found by the Woman's Peace organization committee which investigated the Ludlow massacre and which made its report in a statement to Governor Ammons Thursday.

Half the horrors of Ludlow have not been told, the report says.

The report declares that soldier-gunmen deliberately planned the slaughter and carried it out in cold blood. It says that they fired tents and robbed the helpless victims after the battle had started.

The report blames murderous gunmen for all the outrages in the coal fields since the strike began, and blames coal operators for importing this type of slum vermin.

It was written by Mrs Evangeline Hearts and Mrs Alma V. Lafferty.

Mrs. Lee Champion, who went with the committee to represent the Woman's Relief committee, remained in Trinidad, after the others had finished their work of investigation.

610 It was the same peace organization whose persistency forced Governor Ammons a week ago to call on President Wilson for federal troops. The report is signed by Mrs. Alma Lafferty, former representative, and Mrs. Eva Heartz.

The women demand that the governor immediately order an investigation of all happenings connected with the militia in the strike district and the "atrocities committed by the imported Hessians," that the extra session of the legislature make no provision to pay the indebtedness incurred by the militia "until the military [rools] are purged of Rockefeller gunmen and thugs;" that the governor withdraw his request for a state constabulary; that he exercise his police power to take over the mines for operation by the state, and that a constitutional amendment be submitted pertaining the state to develop its own natural resources.

Captain Philip Van Cise, one of the members of the military board appointed by Governor Ammons to investigate the Ludlow horror, begged Mrs. Lafferty to hold up her report until he could see it and could talk to her about it.

"You are a good little liar, Philip," she replied, "but I intend to tell the people the truth about the militia."

Twelve affidavits, given by survivors of the Ludlow massacre and others on both sides of the labor dispute accompany the report.

The report follows, in part:

Hon. Elias M. Ammons, Governor:

The undersigned committee, appointed by the
611 Women's Peace association, and duly commissioned by you, has returned from Ludlow, and submits the following report:

Our investigation comprised interviews with militia officers and men, strike leaders and strikers and with the district attorney and various citizens of Las Animas county, and we beg to supplement this report with affidavits herewith attached.

Whatever feeling we may have had that accounts of the mine war had been exaggerated were soon dispelled. We de-

clare to you that the half has not been told, and insist that any full and true relation of actual events must expect to suffer by reason of their very incredibility.

Blame on Gunmen.

There is a little use in recounting the details of the Ludlow massacre. Suffice it to say that we place the entire blame for this horror on the imported assassins who masqueraded as sons of Colorado in the uniform of the national guard.

There is no question in our minds but that the attack on the tent colony was planned with care and executed in cold blood. No sooner was the main body of the militia withdrawn from the strike district than a new company was hastily formed out of the mine guards, mine employes, itinerant gunmen and slum sweepings. Known as Troop "A" this officerless, ununiformed detachment, together with the desperadoes under the command of Linderfelt in Company "B" formed the attacking force.

The three machine guns were planted in position prior to Monday morning. We were unable to discover that a single gun was fired prior to the explosion of the three bombs
612 that Major Hamrock admitted to be n his own signal for the battle to begin. The utter unpreparedness of the strikers for fighting is demonstrated by the fact that many of the women and children were still in bed.

Fired the Tents.

We also found that Major Hamrock tested the range of his machine guns by firing into the first line of tents, and that later in the engagement, soldiers soaked paper in oil, and used these torches to spread the conflagration.

Wholesale looting followed the massacre, and one of the pictures painted for us by homeless woman was that of the soldiers carrying trunks to the station, dancing with stolen blankets about their heads to the music of a stolen accordion, and grabbing here and there in the tents for valuables. In support of these assertions, we direct your attention especially to the affidavits of Mrs. Pedregon, Mrs. Bertoloti and Mrs. Chavez, whose savings and household goods were taken, and to that of Mrs. Ed Tonner, which tells how a soldier lighted a broom soaked in oil, and set afire to the tent in which she huddled with her five children.

Fifty of these hunted women, we beg to state, were about to become mothers, and one unfortunate actually gave birth to

her baby while trying to escape the hail of bullets from Hamrock's machine guns.

Tikas Murder.

In many instances we are compelled to disagree absolutely with your military committee. Their report states that
613 the Greeks ruled the colony while we assert that no nationality had a dominant voice.

That Louis Tikas was the recognized leader of the colony was not due to the fact of his being a Greek, but to his ability and the love and confidence he inspired.

At this point we can not too strongly condemn the circumstance of his death. No doubt remains in our minds that Tikas and Fyler, the two leaders, were murdered while in the custody of soldiers, and that the Greek was deliberately clubbed by Lieutenant Linderfelt while standing helpless and unarmed. Not in the annals of civilized warfare is there record of anything more inhuman than the cold-blooded killing of these two prisoners.

We must also disagree with the military committee in the matter of the death of Frankie Snyder.

Boy Shot Down.

Talking face to face with us, and signing an affidavit, Snyder declared that Frankie had been shot down by the soldiers while cradling his little sister in his arms. He also charged the militia with firing the first shot, insisting that the attack was unexpected, and his bitterness was extreme in telling how the militia dashed into the tent where the dead lay and called the weeping mother unprintable names.

We disagree also with the brutal and contemptuous language in which Messrs. Boughton, Danks and Van Cise dismiss the strikers as "ignorant, lawless and savage South European peasants."

614 We declared to you that the Ludlow tent colony was a community of decent people, passionately proud of their little tents, domestic to the last degree, generous and loving in their dealings with one another.

Companies Break Laws.

There is no question that the coal companies have violated every law on the statute books for the protection of their employes.

We insist that these foreigners learned to love the flag, yet when the union women of Trinidad took $3 of their saved pennies and bought the stars and strips to fly over a parade, they were ridden down by the soldiery and the national colors trampled in the dust. Women and children were given saber scars that they will carry to the grave, a 16-year-old girl was kicked in the breast by the commanding officer, and others were maimed by having gun butts dropped on their feet.

We could wish to have pages to recite the tortutes and injustices to which the men, women and children of the strikers were subjected.

Militia Arrests.

Mrs. Mary M. Thomas, a frail little Welsh woman, and the mother of two little children, was arrested on the streets of Trinidad, subjected to abuse and insulted, and confined for three weeks in a vermin-ridden cell. Food was thrown to her as though she had been a beast. Her letters of appeal went unanswered, and she was released at last without one word of explanation or apology.

615 It is hardly necessary to recount the experiences of "Mother" Jones. Regardless of what one may think of her opinion or utterances, surely humanity must sicken at the imprisonment of this old woman of 82 in a rat-infested basement, held on no charge whatever.

Thugs Responsible.

We are glad indeed to be able to report that the real sons of Colorado in the militia seem to have small part in this reign of terror. The brutalities complained of were inflicted almost entirely by the mine guards and hired thugs rushed into the militia by the coal companies, many of them still remaining on the company's payrolls.

The attitude of these creatures was not the least repulsive feature of our investigation. Many of those with whom we talked actually viewed the Ludlow massacre as "fun".

In view of all these things, we beg to make the following recommendations:

1. That you order an instant investigation of all happenings connected with the presence of the militia in the strike district, to the end that a distinction may be established between rightful exercises of the military power and the crimes of individuals, turning latter cases over to the civil authorities

form prompt prosecution. The eyes of the world are upon us, and the honor of Colorado demands that the state refuse to bear the odium of atrocities committed by imported Hessians.

2. That the extra session make no provision for the payment of the indebtedness incurred by the militia until
616 the military rolls have been purged of the Rockfeller gunmen and thugs, and until an auditing committee has made a report that will permit the people to decide between just obligations and fraudulent claims.

No constabulary.

3. That you withdraw your request for a state constabulary, as such an organization could not help becoming a powerful adjunct to the labor-crushing depotism of the coal companies.

4. That you exercise your police power and take over the mines for operation by the state, pending an agreement between the strikers and the operators. Had this been done in the first place, Colorado would not now be burdened with debt and unmerited shame.

5. That you lend your aid to the movement in favor of a constitutional amendment allowing the state to develop its own natural resources, so that we may be freed from the menace of such absentee landlords as Rockefeller, whose only interest in our affairs is the money that his overseers may mint from the seat of wage slaves.

President Wilson expects you "to draw the attention of the legislature to the imperative necessity of immediate consideration of the whole situation, and secure as prompt action as is possible in the premises."

What Will You Do?

Respectfully submitted,

ALMA V. LAFFERTY,
EVANGELINE HEARTZ,
Committee."

617 Mr. Drinker: I don't want to interrupt Mr. Warrum, but I don't see how this is cross-examination of what I read. I offered these articles to show that the miners knew of the competitive relations in Colorado and the Southwest. I did not offer it to show any harrowing details, but my friend has read from an issue of the Journal which I did not read anything from. I did not read anything from that this morn-

ing, and because it is in the same volume, it does not seem to me he can read harrowing details the rest of the day, and I move to strike out the extracts that have been read, which are not from the issue of the Journal from which I read my extracts.

The Court: If they refer to the matters that were offered in evidence.

Mr. Drinker: If there is anything he has where the miners say they don't know anything about the competitive relation of Colorado to the Southwest,—

The Court: They might go further than that.

Mr. Drinker: This does not relate to what I offered already, and I have not offered anything as to this kind of dramatics that have been introduced here. A certain amount I would not object to, but I cannot tell how long it is going on.

Mr. Warrum: I have not taken much time.

The Court: No. Of course, this is not very material.

Mr. Warrum: The trouble is that none of it is material that they have read.

The Court: Have you read all of that you care to, Mr. Warrum?

Mr. Warrum: Yes, sir.

618 The Court: All right.

To which action and ruling of the court the plaintiff at the time duly excepted and still excepts.

Mr. Drinker: I don't want to have to go into an explanation, or read about these dramatics.

The Court: You need not. I have said I did not think it was very material.

Mr. Drinker: I cannot let it go, it is improper, and may I reserve the rght to look over these,—

The Court: Let's don't make this stuff competent by reading other parts. I suppose the issues are, on one side you contend one thing and the other another.

Mr. Drinker: That is perfectly true about the shooting of these people, but here are articles in the Journal that bear a contrary contention, but that is not what I was talking about

at this time at all. I was only introducing, and I tried to pare things down to merely referring to the notice to the miners of the competitive relation betwen Colorado and the Southwest.

The Court: Very well, proceed with the trial.

'619 Mr. Lucas: We offer the deposition of CHARLES CHEEK, taken on the 17th day of October, 1917, at Ft. Smith, Arkansas:

Q. What is your full name?
A. Charley Cheek.
Q. Where do you live?
A. Clarksville, Arkansas.
Q. What is your present occupation?
A. Soldier at the present time.
Q. In what company? In what service?
A. Supply 35th Infantry.
Q. Regular army?
A. Yes, sir; regular army.
Q. When did you volunteer in the regular army?
A. On the 28th day of July, 1915.
Q. Are you sure it was 1915? Wasn't it July a year ago?
A. A year ago this last July?
Q. Then it was July, 1916?
A. Yes, sir.
Q. Where were you when you volunteered?
A. At Forth Smith, Arkansas.
Q. Where are you stationed at the present time?
A. Nogales, Arizona.
Q. How long have you been there?
A. Since last March, the 27th.
Q. Are you here in Fort Smith on a furlough?
A. Yes, sir.
Q. And that furlough was granted at my request?
A. Yes, sir.
Q. For the purpose of allowing you to come to Fort
620 Smith to testify in this case?
A. Yes, sir.
Q. How long is that furlough?
A. Twelve days.
Q. When did you leave Nogales?
A. I left on the 8th but my furlough extends from the 9th. I got permission to start about twelve hours earlier.
Q. When does that furlough expire?
A. The twentieth.

Q. Does that include Saturday the twentieth?
A. Yes, sir.
Q. Do you know when you can get to Nogales if you leave here tonight on the 11:10 train?
A. Get there Saturday morning at ten o'clock providing the trains are all on time.
Q. When did you arrive in Fort Smith?
A. Last Thursday morning.
Q. When did you report to me?
A. Thursday between 8 and 9 o'clock Thursday morning.
Q. Thursday morning the 11th of October?
A. Yes, sir.
Q. Have you held yourself in readiness to testify since that time? A. Yes, sir.
Q. And when reporting to me frequently?
A. Yes, sir.
Q. In order to learn whether or not your testimony was to be taken? A. Yes, sir.
621 Q. Do you remember in 1914 when you were working for the Bache-Denman Coal Company at Prairie Creek? A. Yes, sir.
Q. When did you go to work down there?
A. On the 6th day of May, the best I remember right now.
Q. What were your duties there?
A. Firing.
Q. Did you have anything else to do there?
A. No, sir, that is what I went there to do, fire and work at the mines.
Q. Were you assigned to do anything else while you were there later on? A. Yes, sir.
Q. What was that work?
A. Running the hoisting engine some and done some wagon work, driving a team, and done a little guard duty.
Q. Did you go down to the mine on Sunday April 5th?
A. Yes, sir.
Q. With whom did you go? A. Will Young.
Q. Who got you to go down there?
A. John Trigg.
Q. What did you do that night,—that Sunday night?
A. Fired the boilers.
Q. Do you remember the trouble that took place there on Monday? A. Yes, sir.
Q. What was the first you saw of that trouble?
A. The first I saw was the men gathering around the school house.

Q. About how many men were gathering there?
622 A. Looked to be somewhere around 750 or 800 men.
Q. Do you remember anyone from the school house going down to the mine? A. Yes, sir.
Q. Who came down?
A. All the whole crowd came down there.
Q. Did the committee come down before that?
A. Yes, sir.
Q. Who were on that committee, if you know?
A. I know their faces but I can't hardly remember their names.
Q. Do you know whether Jim Slankard was on that committee?
A. Yes, sir, Jim Slankard was there on the committee.
Q. Can you think of any others?
A. And Clint Burris. No, it wasn't Clint Burris.
Q. Were John Manick and Ves Howard on that Committee? A. Yes, sir.
Q. Did Slankard have any conversation with you?
A. No, sir.
Q. Did anyone ask you if you would go and talk with the man?
A. Yes, sir; the committee asked me that.
Q. Who did the talking?
A. Slankard, the best I remember, did the talking.
Q. What did he say?
A. He asked if I would go out and talk to the crowd of men.
Q. Did you go? A. No, sir.
Q. What did you tell Slankard?
A. That I was afeared to go out there to where the body of men was.
623 Q. Was this before the crowd had come on to the mine property? A. Yes, sir.
Q. Were they at the ropes at that time?
A. Yes, sir.
Q. There was a wire rope stretched around the mine enclosure? A. Yes, sir.
Q. Who was guarding out there at the edge of the road?
A. Bailey and Barnes.
Q. Did you see any trouble out there where they were guarding? A. Yes, sir.
Q. State what you saw.
A. I saw some men jump on to Barnes out there and beat him up.
Q. What was the next thing you saw? Did you see anyone go up on the platform after the fight there?

A. Jim Slankard climbed up on a little platform where they loaded coal into cars out there and told the crowd that they would cease operations at the mines; that the superintendent had agreed to.

Q. What if anything, did the crowd do after Slankard made that announcement?

A. They broke over the ropes and came out to the mine property.

Q. What did they do?

A. They beat Sylesberry and Looper up and also nailed the union banner up on the tipple.

Q. Did you see them beat up Sylesberry and Looper?

A. Yes, sir.

Q. Did you see anybody that you knew hitting Sylesberry?

A. Yes, sir.

Q. Who was it? A. Clint Burris.

624 Q. What did he do?

A. Hit him with his fists.

Q. Did Looper start that fight? A. No, sir.

Q. What was Looper doing?

A. They were pulling the fires from the boilers.

Q. Who were they?

A. Looper and Sylesberry.

Q. Were Looper and Sylesberry showing any fight when they were attacked? A. No, sir.

Q. How many were in the crowd that beat up Sylesberry and Looper?

A. I couldn't hardly estimate they were so thick around there,—quit a number of them.

Q. Was the whistle blown at that time?

A. Yes, sir.

Q. Did you see who blew it?

A. Yes, sir.

Q. Who was it?

A. I can't call his name just now. I know his name but I can't recall it. He blew the whistle a while and then tied it down with the rope.

Q. You can't remember his name? A. No, sir.

Q. Do you know where he worked?

A. No, sir, I don't know where any of them were working there.

Q. Do you remember some trouble that you had on May 18th up at the Midland Station? A. Yes, sir.

625 Q. Will you describe who was with you and what happened up there?

A. Will Bohannon and Levi Brown went up there with me to haul a stove and some bread from the depot down to [Mr.] 4 camp.

Q. State what, if anything occurred while you were putting the goods on the wagon?

A. There was a crowd of men gathered up around Buck Tharel's grocery store there.

Q. How far was Buck Tharel's store from the station?

A. Something like a hundred feet.

Q. Did you recognize anyone in that crowd?

A. Yes, sir.

Q. Who were they?

A. Moro Colo and Foster Bean.

Q. Did you see any officers of the law over there at Buck Tharel's store? A. Yes, sir; saw one.

Q. Who was he?

A. He was the City Marshal there or Constable.

Q. Do you know whether it was Constable Philpot?

A. Philpot I believe is his name, yes, sir.

Q. Now when you started from the station in the wagon what happened?

A. They began to throw rocks at us.

Q. Did you see anyone throw rocks?

A. Yes, sir.

Q. Who? A. Moro Colo and Foster Bean.

Q. Was Constable Phipot there at that time?

A. Yes, sir.

626 Q. State then what occurred?

A. We drove down a piece and some bread boxes were about to fall off the stove and we got down to fasten them and tighten the ropes up. The Constable and Marshal and deputy, I believe, they said he was, came down there and arrested us.

Q. Do you know what the name of the City Marshal was?

A. Hulsy.

Q. Do you know whether that was Madge or Marion?

A. It was Madge Hulsy.

Q. Was his brother the deputy?

A. Yes, sir, if I understood it right; one of them was Constable and the other was city marshal.

Q. Did Will Bohannon do anything with his gun at that time?

A. He took it out of the wagon and set it down against the wagon wheel.

Q. Did he point it at any one? A. No, sir.

Q. What were you arrested for?

A. Stopping there in the road I guess. I was accused of carrying concealed weapons.

Q. Do you know whether any arrests were made of the rock throwers? A. Not that I know of, no, sir.

Q. Was this the time when you were subpoenaed to go over to Midland to testify at night? A. Yes, sir.

Q. Then there were some arrests made?

A. I suppose there were by me getting a subpoena to go over there.

Q. Who was subpoenaed?

A. Will Bohannon, Levi Brown and myself.

627 Q. Was that the same night? A. Yes, sir.

Q. Was it the same night that this occurred in the morning? A. Yes, sir.

Q. Did you go over there to testify? A. No, sir.

Q. Why didn't you go?

A. I was afeared to go over there.

Q. Where were you summoned to appear?

A. Midland at the Mayor's office.

Q. When was that case called?

A. The next day at 10 o'clock.

Q. What was the outcome of that case?

A. They gave us a trial there and I was fined a hundred dollars and costs and taken a change and went to Greenwood with it.

Q. Do you remember some trouble you had at Prairie Creek Station around the 10th of June?

A. Yes, sir.

Q. State now without my asking you any further questions, all that happened at that time?

A. We was going over there to meet the train to haul some feed and groceries out to the mines. Robinson cut up some feed sacks. And Sandy Robinson kicked open some bales of hay. Slankard was there, constable, and did't try to avoid any of it at all; didn't say anything to him.

Q. Did you see Sandy Robinson [out] these sacks?

A. Yes, sir.

Q. What did he cut them with?

628 A. Pocket knife.

Q. Was there anything said by that crowd?

A. Yes, sir, one of the train crew told them to throw it off —said it was scab stuff and it didn't matter how they handled it.

Q. Were any remarks addressed to you and the rest of the employees? A. Yes, sir, they called us scabs.

Q. State how they called you scabs, what language or what tone?

A. They were cussing and called us scabs and scabbing sons of bitches; that we were working at the mines out there.

Q. Who did that cussing? A. Sandy Robinson.

Q. Do you remember any others that were there?

A. Clint Burris I believe was there.

Q. Now do you remember some trouble that was had on the train—Midland Valley train No. 4 crossing about June 15th?

A. Yes, sir.

Q. Will you state what occurred at that time?

A. There was some of us coming down from Fort Smith, been up here attending court and coming back to the mines the train stopped there for them to get off. We also had some groceries on the train that evening and Sandy Robinson and Clint Burris.

Q Did you see anyone there with a ball bat in his hand?

A. Yes, sir.

Q. Who was that?

A. Sandy Robinson. There was two of them but I can't speak the other fellow's name.

Q. By way of refreshing your recollection, did you testify in the contempt proceedings before Judge Youmans?

A. Yes, sir.

629 Q. Did you then state that John Manick was in this crowd? A. Yes, sir.

Q. Do you remember now that he was there? A. Yes, sir.

Q. What were John Manick and Sandy Roginson doing?

A. Trying to keep the men from getting off the train there to work.

Q. Where were they stationed?

A. One of them was on one end of the passenger coach and the other one was on the other end.

Q. Whom did you say had ball bats?

A. Sandy Robinson and this Manick.

Q. Who were there for the company?

A. John Shaleen, myself, Clarence Shaleen, Tom Allison,

Q. Do you remember the date of the battle? A. Yes, sir.

Q. Now if that was on July 17th do you remember a week or ten days before that some trouble that was had down at the high tension line one evening? A. Where was that at?

Q. At the high tension line down by the school house there?

A. Yes, sir.

Q. Who were you with? Were you with Harry Dunlap?

A. Yes, sir.

Q. What were you doing with Harry Dunlap?

A. We went out there watching the line and some fellows came up and we took one of them into camp.

Q. Had anything been done there before that?

A. Yes, sir. The wire had been burned in two.

630 Q. How long before?

A. Just a short time, a night or so before that.

Q. What was that high tension line, what did it supply?

A. It supplied the lines around the mines and the gas engine with the power.

Q. Describe a little more in detail what happened there when the crowd bunched up around the high tension line?

A. Well, sir, we stopped in the shade there by a small bush and two fellows came up towards the post where this line were on it and there was a dog spied us. There was several more men around there in the road.

Q. How did you happen to come out from behind the bush?

A. The dog made a rally that way and two of these men started down towards us and we stepped out of the light.

Q. What did you do then?

A. Hollered at them and one of them run away and the other one stopped.

Q. Were any shots fired? A. Yes, sir.

Q. Who fired them? A. I don't know who they were.

Q. Did you or Harry Dunlap shoot? A. No, sir.

Q. What did you do with this man that stopped?

A. Carried him down to the camp where the marshals were.

Q. Whom did you meet at the gate of the camp?

A. Cooper Langford.

Q. What did you do with this man?

A. We stopped there and talked a few minutes and

631 went on out and turned him over to the marshal.

Q. Whom did you turn him over to? Do you know who the marshals were that were there at that time?

A. I know part of them, not all of them. I know their faces but not their names. Jim Holt was there at that time.

Q. You don't know which marshal it was you turned this man over to?

A. Best of my remembrance, it was Jim Holt we was talking to.

Q. Did you come up to Fort Smith to testify in the contempt proceedings before Judge Youmans? A. Yes, sir.

Q. Do you remember one day when you and Harry Dunlap were coming up to Fort Smith to testify and you got on the train at Montreal and there were some men on that train and you had some trouble with them? A. Yes, sir.

Q. State what occurred at that time.

A. He was coming there to attend court. Jim Slankard, Sandy Robinson and some more fellows were on the train at the time we got on.

Q. What did you hear them say, if anything?

A. Heard them cussing the scabs down there. They wasn't talking direct to us but to each other and we understood their conversation.

Q. Whom did you hear talking?

A. Slankard and Robinson both.

Q. Do you remember the Sunday night before the big battle down there, do you remember any trouble that occurred over in Frogtown?

632 A. Yes, sir.

Q. What did you hear that night?

A. Heard some shooting over there.

Q. What did you do when you heard that shooting?

A. I was in bed when the shooting first taken place, and I got up and walked around the mines and out over the property there.

Q. About what time did the shooting first take place?

A. The best I remember it was between 8 and 9 o'clock the first shots were fired.

Q. Were any other shots fired after that?

A. Yes, sir, later on in the night.

Q. What did you do that night?

A. I watched around the mine there.

Q. Whom do you remember when you all got up when the first shots were fired—I just want those that you actually remember seeing there?

A. I saw Jim Prince and Bill Young. Harry DeMoss I believe was with us, the best I remember.

Q. Anyone else? A. John Shaleen.

Q. Is that all you can remember?

A. Yes, sir, that is all I can remember right at the present time.

Q. You have named four or five. Were there others around there in the case? A. Yes, sir.

Q. About how many men were there in the camp that night? A. There was between 20 and 25 men around.

Q. Did you miss any of them out of the camp?

633 A. No, sir.

Q. Did you know of anybody going over into Frogtown and shooting the place up? A. No, sir.

Q. Did you ever go up there yourself? A. No, sir.

Q. Either this Sunday night or any other night?

A. No, sir.

Q. Did you ever hear any of the men say that they had been over there? A. No, sir.

Q. Coming down to the day of the battle, what did you do on the morning of the battle?

A. I was sent out to run the telephone line early that morning; they couldn't get service over it and was sent out to see whether the line was cut down.

Q. With whom did you go out? A. Fred Eustice.

Q. Where did you go? A. Midland.

Q. Did you on the way go up through No. 4 boarding house? A. Yes, sir.

Q. What did you see up there?

A. Didn't see anything as I went out.

Q. Did you see anything at any time?

A. Yes, sir, as I started on return back to the camp I seen quite a number of men around there.

Q. Around No. 4 camp? A. Yes, sir.

634 Q. Were they armed? A. Yes, sir.

Q. All of them?

A. Yes, sir; I seen maybe three or four in the crowd that was not armed.

Q. About how many were there in the crowd?

A. I estimate something over a hundred of them in the crowd.

Q. Did you know any of them? A. No, sir.

Q. Did you find any trouble on the telephone line?

A. No, sir.

Q. Where did you go the day of the battle?

A. I laid over there in a corn field on the creek bank until late in the evening.

Q. Could you hear the shooting? A. Yes, sir.

Q. Did you see anybody during that day that you knew?

A. Not until the battle were about all over, some of our men came by.

Q. Where did you go to get away from that part of the country?

A. Came up through the woods to Midland to where Mr. Sylesberry lived and then we taken to the mountains there.

Q. Did you come back to Fort Smith?

A. Yes, sir, the next day.

Q. What time did you get in here?

A. About ten o'clock.

Q. Did you walk all the way?

A. No, sir, we caught a train at Montreal.

635 Q. You said that a little while before you and Harry Dunlap went down to the high tension line that night, a few days before the wire had been burned out that day?

A. Yes, sir.

Q. Did you see it, or see it after it had been burned?

A. Yes, sir.

Q. What happened, if you know?

A. The best I could tell there had been a chain of some description thrown across these two wires and made a short circuit and burned them in two.

Q. Have you had a good deal to do with electricity?

A. Yes, sir.

Q. And that was why you were sent out? A. Yes, sir.

Q. Where was the wire broken, how far from the pole?

A. It looked to be about 20 feet from the pole.

Q. Who fixed that break, do you know?

A. No, sir; the Light & Power Company fixed it. I don't know who they were.

Q In any of these troubles that you had with these parties, these crowds at Midland station or Prarie Creek station around the train, did you, or did you see any other of the company men start any trouble with these men? A. No, sir.

Q. Did you do anything that would excite them or provoke them to throwing rocks, or anything of that kind?

A. No, sir.

Q. Were you, or did you see any of the company men at any time the aggressor in any of these troubles?

636 A. No, sir.

Q. Do you know whether they were hoisting coal there just before the battle? A. Yes, sir.

Q. How much had they hoisted?

A. Hoisted a part of two days.

Q. And there were some loaded coal cars there?

A. Yes, sir.

Q. When are you leaving Fort Smith?

A. Tonight at 11:20 I believe the train leaves here.

Q. You are at our disposal, or at the disposal of counsel for the defendants until eleven o'clock tonight? A. Yes, sir.

Q. And where are you going when you leave here?

A. Nogales, Arizona.

Cross-Examination

Mr. Grant (Reading):

Q. What were you doing prior to your entering into the service of the Bache-Denman interests on May 6th?

A. Coal miner.
Q. At what point?
A. At the Pennsylvania Mining Company, Jamestown, Arkansas.
Q. That is in Johnson County, is it? A. Yes, sir.
Q. Did you work regularly for them?
A. Well, I worked there some, and other places around.
Q. How long had you worked for them before May 6, 1914?
A. Been working there off and on a little better than a year.
637 Q. Steady employment or just occasional?
A. Just occasional.
Q. Was that a union or non-union mine.
A. Nonunion.
Q. Where did you work before that?
A. Worked some in Colorado.
Q. How long in Colorado?
A. Worked two days and a half.
Q. At what point?
A. Burma, just above Ludlow.
Q. You worked there only two days and a half?
A. Yes, sir.
Q. Is that a non-union mine?
A. Yes, sir.
Q. Where had you been employed before that?
A. Jamestown, Arkansas.
Q. How long had you been working at Jamestown, Arkansas, before you went to Colorado?
A. About five months.
Q. What year would that be in now?
A. 1913 I went out there.
Q. Where did you work before that?
A. Worked on a farm.
Q. That was the beginning of your coal mining?
A. No, sir, I had worked some at Spadra, some five or six years before that.
Q. Where had you worked in March and April of 1914?
A. Worked in Jamestown, Johnson County.
638 Q. How long did you work in April, 1914?
A. I don't remember, sir, just how long.
Q. Did you work the whole month?
A. The majority of it, yes, sir.
Q. Most of the month you were worked at Jamestown, most of the month of April. How about the month of March?
A. I don't remember what I was doing the month of March.

Q. When did you first come up to Prairie Creek?
A. May.
Q. May 6th or 5th? A. 5th.
Q. That was your first visit there and you too employment the 6th?
A. I worked the night of the 5th.
Q. You really began on the evening of May 5th?
A. Yes, sir.
Q. You had not worked there before?
A. No, sir.
Q. Nor been there before? A. No, sir.
Q. Never been in Prairie Creek before May 5th, 1914?
A. Passed through there was all.
Q. Was it this first period that you have testified to during which you worked at Jamestown near Clarksville in a non-union mine that you and a party of some thirty others way-laid and assaulted Frank Jarnigan, a union organizer, and beat him into insensibility, and bruised his skull?
A. Yes, sir, I was there but I didn't see any 25 or 30 others.
Q. How many were there with you?
639 A. I seen four or five other men.
Q. Only four or five others?
A. Yes, sir, that was right.
Q. Are you sure there wasn't something like thirty?
A. I didn't see them.
Q. That was the Jarnigan that afterwards brought suit against the Pensylvania Mining Company for damages?
A. Yes, sir.
Q. And recocered judgment in the Federal Court here for his injuries?
A. I don't know, sir, I haven't heard.
Q. You do know about the suit being brought?
A. Yes, sir, I know suit was brought before I left here.
Q. Now how long did you work at No. 4 Prairie Creek?
A. I worked there off and on from the time I went there up until the 17th of July.
Q. Where did you go then?
A. I went back to Jamestown.
Q. Did you resume coal mining at Jamestown then?
A. Yes, sir.
Q. How long did you work there?
A. I worked there till 1915.
Q. Until 1915?
A. Yes, sir, up until in July.
Q. Then where did you go?

A. Enlisted in the army.
Q. Did you you go out to Colorado after you left Jamestown? A. Yes, sir, I went out there.
640 Q. What did you do out in Colorado?
A. I worked at an ore mine out there.
Q. As a miner or guard?
A. Miner and electrician.
Q. You are a married man, are you not?
A. Yes, sir.
Q. Where was your family living on May 6th, 1914?
A. At Jamestown.
Q. Did you take them with you over at Prairie Creek?
A. Not at that time, no, sir.
Q. Did you later, before July 17th?
A. No, sir.
Q. What date did you take them over there?
A. They came over there on a visit and only stayed a day and night and went back.
Q. They just visted you?
A. Yes, sir.
Q. And still kept their home at Jamestown?
A. Yes, sir.
Q. When you went to Colorado did you take them with you? A. No, sir.
Q. You joined the army on July 28, 1915?
A. I applied for enlistment on that date, the best I remember.
Q. I see in this typewritten copy of your examination this morning which has been handed me: "When did you volunteer in the regular army?" and the answer is "On the 28th day of July, 1915". Q. Are you sure it was 1915, wasn't it July a year ago?
A. No, sir. "A. A year ago this last July". I wish
641 you would State now when it was you did join the regular army, was it 1915? I withdraw that question just a moment. You come back from Prairie Creek on the 17th or 18th of July, 1914? Is that right? A. Yes, sir.
Q. How long did you remain at Jamestown?
A. I remained there until I enlisted in the army.
Q. How long would that be? A. One year.
Q. Then you enlisted in the army in July, 1915, didn't you, as you first testified to?
A. Yes, sir. This last past July a year ago I enlisted in the army.
Q. How long did you remain at Jamestown when you went back in July 1914, before you enlisted?
A. About a year.

Q. About a year? A. Yes sir.
Q. You were married at the time, were you not?
A. Yes, sir.
Q. Have children? A. One.
Q. Had you deserted them before you enlisted in the army? A. Yes, sir; she had me rather.
Q. Now you say when you went there on the 6th or as you now say on the evening of the 5th of May, that you fired and worked at the mines?
A. Yes, sir.
642 Q. Did you do any guard duty?
A. Yes, sir, later on.
Q. Well, how much later on?
A. Some time after that, I don't remember just what time in May.
Q. When did your guard duty begin, what time in May?
A. It was in June before I did any guard duty.
Q. How late in June?
A. I don't remember just what time; some time in June.
Q. How many guards were there when you went on to that special service?
A. Two or three or something like that; I don't remember just how many.
Q. Don't you know that there was a great many more than two or three? A. There was at times.
Q. How many men were armed that were working at No. 4 mine? A. I don't remember just how many.
Q. Haven't you stated in here that there is about twenty? Or, state it now if you remember? Approximately?
A. No, sir, I don't believe I stated there was twenty.
Q. Well, how many would you state there was now; how many armed men?
A. I don't remember ever counting them to see just how many there was.
Q. Did you ever count the number of guns they had around there? A. Yes, sir.
Q. How many guns did they have?
A. Fourteen at one time.
643 Q. Are you acquainted with A. N. Berkle?
A. No, sir.
Q. Do you know who I mean when I speak of Berkle?
A. No, sir.
Q. Do you remember the occasion when you with some other guards of the Coal Company arrested a man on the public highway and brought him to your camp and put him

under guard and next morning brought him to Fort Smith and then turned him loose?

A. We didn't arrest any men on the public road.

Q. Do you mean to testify that you didn't arrest any one or took anyone in custody on the public highway while you were serving as a gaurd at this No. 4 Prairie Creek Mine?

A. We taken a fellow down by the camp but we didn't arrest him in the public road.

Q. Where did you arrest him?

A. At the side of the road on private property.

Q. Where was he when you arrested him? How far from the mine?—Mile from the mine?

A. No, sir.

Q. A half of a mile? A. No, sir.

Q. Well, was he a hundred rods from the mine?

A. Somewhere from three to four hundred yards from the mine.

Q. Along by the side of the road? A. Yes, sir.

Q. Was he with anyone? A. Yes, sir.

Q. Who was he with?

644 A. I don't know, sir, who they were.

Q. Did you arrest anyone else?

A. No, sir.

Q. Did the others leave? A. Yes, sir.

Q. What did you do with this particular man?

A. Taken him down to the camp and turned him over to the Marshal.

Q. Did you ask his name? A. No, sir.

Q. What did you call [it] when you took him to the camp? You say that wasn't arresting him or taking him into custody. Did you just invite him?

A. I halted him. There was two of them; one of them stopped and the other one run.

Q. Do you mean to say you halted him with a gun?

A. No, sir.

Q. Did you have a gun?

A. Yes, sir.

Q. Did the other guards have guns?

A. There was only one with me.

Q. Did this man with you have a gun?

A. No, sir.

Q. But you halted him? A. Yes, sir.

Q. What did you tell him? A. To stop.

Q. Did you walk up to him then? A. Yes, sir.

645 Q. What remark did you make to him?

A. I asked him what he was doing there.

Q. What did he say he was doing?

A. He said he was going home.
Q. Did he tell you he had been to see his sweetheart and was going home to where his mother lived?
A. Yes, sir.
Q. What did you say?
A. Told him we would like for him to go down to the camp and let us see him.
Q. What did he say? A. He said all right.
Q. You invited him then, to walk down to your camp?
A. Yes, sir.
Q. And he accepted your invitation to walk to the camp?
A. Me and the other fellow together.
Q. Did he insist that he had a right to go on home?
A. Yes, sir.
Q. He insisted that he ought to be allowed to go on home?
A. Yes, sir.
Q. What did you insist, that he come with you?
A. Yes, sir.
Q. And he had no gun and you had a gun a piece?
A. Yes, sir.
Q. And so while he was insisting that he be allowed to go on home you were insisting that he go with you to the camp and you made him? A. I didn't make him.
646 Q. But he insisted on his right to go home?
A. Yes, sir.
Q. And you insisted that he go with you?
A. Yes, sir.
Q. Did you learn who he was?
A. Yes, sir, I learned what he told us.
Q. What was his name? A. Berkle.
Q. That is the man I asked you about a moment ago?
A. I suppose it is; he said his name was Berkle.
Q. Did you do any shooting on that occasion?
A. No, sir.
Q. What did you do with the man when you took him down to the camp?
A. Just standing there,—left him in charge of the Marshal.
Q. Who was the Marshal?
A. Jim Holt and several of them around there.
Q. What time was this?
A. About 9 or 10 o'clock at night.
Q. What month and what day of the month?
A. I don't remember, sir.
Q. You have no recollection at all about when this affair occurred? A. No, sir.
Q. Was it in May or June?

A. I don't remember just when it was.
Q. It couldn't have occurred in April because you were not there in April?
647 A. I don't suppose it would when I wasn't there.
Q. It must have been the first part of May, June or July? A. Yes, sir.
Q. And your recollection is that you turned him over to Jim Holt? A. Yes, sir.
Q. Then if you turned him over to anyone you turned him over to the Chief Deputy Marshall? A. Yes, sir.
Q. And Holt was the Chief Deputy at the time?

(The witness didn't answer.)

Q. Did you come to Fort Smith with him?
A. No, sir.
Q. Did you ever see him after that? A. No, sir.
Q. I notice in your examination some questions about the shooting up of Frogtown Sunday night before what is called the big battle, and your answer that you remember it. Frogtown was shot up twice, was it not?
A. Not that I remember of, no, sir.
Q. This time that you are testifying about was the Sunday before what has been termed the big battle?
A. Yes, sir.
Q. That is the only time you know of Frogtown having been shot up? A. Yes, sir.
Q. If there was any other shooting up of Frogtown previous to that, you are not aware of it? Is that right?
A. No, sir.
Q. How far is Frogtown from Prairie Creek No. 4
648 mine? A. Something like a mile and a half.
Q. How far would Frogtown be from Hartford then?
A. I don't know, sir; I was never up there; I don't know for sure. I have been through there in the night on a train.
Q. Never over the road?
A. No, sir, not on the dirt road.
Q. You have been as far as Frogtown but not Hartford?
A. No, sir.
Q. When did you go to Frogtown?
A. I went there after the battle, went there with a wagon.
Q. You went there July 17th? A. No, sir.
Q. When was it?
A. Sometime after that, when they had the soldiers down there and I went back to work.

Q. You had never been to Frogtown before?
A. No, sir.
Q. Were you a guard at that time?
A. Yes, sir.
Q. You heard the shooting after that you say?
A. Yes, sir.
Q. And it was between eight and nine o'clock that the first shots were heard by you? A. Yes, sir.
Q. And later you heard other shots?
A. Yes, sir.
Q. How much later?
A. It was off and on all during the night.
649 Q. What was Frogtown, a mining camp?
A. Yes, sir.
Q. Was it a camp of union miners?
A. Yes, sir.
Q. No non-union miners lived there, were there?
A. Not that I know of, no, sir.
Q. Do you know how many shots were fired that night?
A. No, sir.
Q. The women and children of Frogtown had to leave that place and run over to Hartford that night?
A. I don't know, sir.
Q. You heard that, did you not?
A. I heard some such talk.
Q. And you heard it right at the time?
A. No, sir.
Q. Was it the next day?
A. No, sir, it was a couple or three days after that.
Q. About the time of the big battle? A. No, sir.
Q. Before the big battle? A. Yes, sir.
Q. Did you hear it in a crowd of people?
A. I just heard them talking about it.
Q. Who did you hear talking about it?
A. I don't remember who it was.
Q. Was it in your camp that you heard it?
A. No, sir.
Q. Where was it? A. Midland.
650 Q. You heard the circumstances there talked about—the shooting up of Frogtown and the women and children running over to Hartford?
A. Yes, sir.
Q. And that was before the battle on the 17th?
A. Yes, sir.
Q. Did they seem to be out of fix about it when you heard them talking? A. They didn't talk like it.
Q. Were they excited when you heard them?

A. They seemed to be a little bit, yes, sir.
Q. Now when you heard the first shots were you in bed?
A. Yes, sir.
Q. What time did you go to bed that night?
A. Between six and seven o'clock.
Q. Did you have night duty? How did you happen to be to bed so early? A. Yes, sir.
Q. What was your schedule of service?
A. Generally got up about 4 o'clock in the morning.
Q. An guarded until what time?
A. Until eight and sometimes 12 o'clock.
Q. What was the regular watch for a guard, eight hours or 6 hours? A. Eight hours.
Q. The day was divided into three watches, then?
A. Supposed to be, yes, sir.
Q. Then there were—then if you served from 4 to 12, another guard would serve from 12 to 8? Is that right?
651 A. Yes, sir.
Q. And another from eight to four again?
A. Yes, sir.
Q. Then there were guards that were not asleep at that time? A. Yes, sir.
Q. The other two sets of guards would not be asleep at that time? A. Yes, sir.
Q. You got up when you heard the first shots?
A. Yes, sir, when I first heard the shots I got up.
Q. Did you see any guards around there when you first got up? A. Yes, sir.
Q. Who were they?
A. Jim Prince, Bill Young, John Shaleen and Clarence Shaleen.
Q. And Henry DeMoss?
A. Henry DeMoss was one of the guards that I seen at that time.
Q. Now I am asking you who were the guards that you saw around there?
A. Jim Prince and Harry DeMoss and Bill Young.
Q. When was their guard duty fixed for, the same as yours? A. No, sir.
Q. They had been sleeping and woke up with you?
A. I don't know whether they had been asleep or not. I just seen them when I got up and stepped out.
Q. How many guards were there on your shift?
A. Four.
Q. Four on your shift and four on each shift?

A. On the day shift they only used three guards and some times two.

652 [—] A. Yes, sir.

Q. Am I quoting you correctly? A. Yes, sir.

Q. You didn't see these other guards when you first got up? A. Not when I first got up, no, sir.

Q. You saw them later in the night, did you?

A. Yes, sir.

Q. Did you ask them what they were shooting up Frogtown for? A. No, sir.

Q. Was there any joking about the shooting up of Frogtown? A. Yes, sir some little.

Q. Who joked about it, did you?

A. Yes, sir, for one.

Q. Who else?

A. I don't remember just who all—there was several of us bunched up there talking.

Q. Did Jim Prince and Harry DeMoss joke some about the shooting up of Frogtown?

A. Yes, sir; we were all there together.

Q. And did some of the others joke about it?

A. Yes, sir.

Q. When you were joking about it, would you in a joking way say "You fellows were over there shooting up Frogtown" and they would say something back in a joking way?

A. No, sir, the remark they made that we would be accused of the shooting over there.

Q. Were they jokingly made or seriously?

A. Just joking.

Q. Do you remember any of the remarks?

653 A. Nothing more than just standing there and talking Something was said about that place being shot up and whoever it was, says: "We will be accused of it" and commenced laughing.

Q. How many men were there working at that place at that time in addition to the guards in and about the mine?

A. About twelve or fifteen, or something like that.

Q. I will ask you if you didn't state this morning in anwer to how many men were there in the camp that night, your answer was: "There was between twenty and twenty-five men around". Is that correct? A. Guards and all.

Q. Guards and all there would be twenty to twenty-five men? A. Yes, sir.

Q. Had you counted them that night when you were sitting around joking? A. No, sir.

Q. When you were asked this question this morning "Did you miss any of them out of the camp?" what you meant to

say is that you did not make any count, or did no figuring about it. Is that right?

A. Yes, sir, didn't count them up.

Q. Why did you say you didn't miss any of them out of the camp? A. I seen quit a bunch of them around there.

Q. Were some of those laboring men, not guards—but the others were they jokingly accused? A. Yes, sir.

Q. All there together and all laughing about it?

A. Yes, sir.

Q. Did they have guns themselves?

654 A. No, sir.

Q. You had a gun? A. Yes, sir.

Q. They had a gun there for each man, did they not?

A. No, sir, not for each man.

Q. How many guns did you see them have?

A. I don't know just how many they had all the time.

Q. Did they have 25 guns there in the camp?

A. There might possibly have been that many, yes, sir.

Q. What kind of guns were they?

A. Some of them pistols and some of them Winchesters.

Q. What they call high power rifles down here? Is that right? A. Yes, sir, high power rifles.

Q. In addition to the pistol they had some 25 guns, did they not? That is rifles? A. Besides the pistols?

Q. Yes. A. I couldn't say whether they did or not.

Q. Did the guards carry pistols too, did they?

A. No, sir.

Q. Now was there any talk next day about the shooting up of Frogtown? A. No, sir.

Q. All the joking was that night? A. Yes, sir.

Q. About what time was this?

A. Backwards and forth all night, because we didn't sleep any more.

655 Q. Did you go back to bed? A. No, sir.

Q. Did you stay up all that night, A. Yes, sir.

Q. Why didn't you go back to bed?

A. Didn't feel like going to bed; didn't know but what they would come over where we were.

Q. You thought the people that shot up Frogtown might come over there and there was a great deal of excitement?

A. No, sir, there wasn't a great deal of excitement.

Q. Then it was mere caution? Is that right?

A. Yes, sir, they had been threatening to shoot the place up and we didn't know but what they would.

Q. They threatened to shoot the place up after the shooting up of Frogtown? A. Before.

Q. And you heard of this shooting up of Frogtown when you were over at Midland? Is that right?

A. I just heard them talking.

Q. Did you hear anyone talking about the feeling over at Hartford? A. No, sir.

Q. You don't know that the citizens over there were guarding for an attack against your camp, from Mine No. 4?

A. No, sir.

Q. How did you happen to go to Prairie Creek on March 5th? Were you sent for? A. No, sir.

Q. You are a professional strikebreaker are you not?

656 A. No, sir.

Q. Or were at that time?

A. Well, I followed it some.

Q. Did you get a notice then from Mr. Bache or Mr. Finley, or Mr. Gulley, or anyone in charge of the mines there, written to you at Jamestown to report for duty?

A. No, sir.

Q. Well, did it come through any detective agency?

A. No, sir.

Q. Who did you get it from?

A. Mr. Triggs were down there and he was talking to a man about some work.

Q. Mr Triggs came down to Jamestown? A. Yes, sir.

Q. And he told you you could get employment at Prairie Creek No. 4? A. Yes, sir.

Q. When did he tell you this? A few days before you came up? A. Yes, sir.

Q. When would you say it would be, about the first of May? A. Yes, sir, about—on Friday, I believe.

Q. And you knew nothing about the chance for employment until Mr. Triggs told you a few days before you came up?

A. He wasn't exactly telling me; he was telling an old friend of his and I overheard it.

Q. You heard Mr. Trigg telling a friend of yours at Jamestown that there was an opportunity to get employment at Prairie Creek? A. Yes, sir.

657 Q. And that was how many days before May 5th when you went there?

A. It was on Friday before I went down there on Sunday.

Q. Then that would be two days before? A. Yes, sir.

Q. And apart from that you didn't know anything about the mines at Prairie Creek? A. Yes, sir.

Q. And that was how many days before May 5th when you went there?

A. It was on Friday before I went down there on Sunday.
Q. Then that would be two days before? A. Yes, sir.
Q. And apart from that you didn't know anything about the mines at Prairie Creek in the mine, nor the situation there at all? A. No sir.
Q. And previous to that time you had done some work as a professional strike breaker?
A. I have been in one or two different places where they had strikes.
Q. Were you a professional guard also? A. No, sir.
Q. This was your first work as a guard?
A. I had guarded a shift or two at Jamestown?
Q. Were you a guard when you and those five or six other men waylaid and assaulted Frank Jarnigan, the union organizer? A. No, sir.
Q. Just a miner? A. Yes, sir.
658 Q. Was there any guards in that crowd?
A. No, sir.
Q. They were just simply non-union miners in that crowd that assaulted Frank Jarnigan?
A. They were non-union miners. Didn't any of them assault him except myself.
Q. You are the one that really did the assaulting?
A. Yes, sir.
Q. You got acquainted with two guards at that time that you mentioned in your examination this morning, Bailey and Barnes? A. Yes, sir.
Q. Now, Bailey was arrested over there was he not, for assaulting a young lady? You remember that transaction?
A. Yes, sir.
Q. When was that? In June or July?
A. I don't remember when it was.
Q. Was it Bailey or Barnes? A. Bailey.
Q. It was Bailey or Barnes? A. Bailey.
Q. Well, he was fined, was he not?
A. I don't know, sir.
Q. You were arrested, were you not? A. Yes, sir.
Q. Were you arrested by a constable? A. Yes, sir.
Q. In what town was it? A. Midland.
Q. Who was the constable?
659 A. Constable and City Marshal and a Deputy; there were three of them.
Q. There were three police officers arrested you?
A. Yes, sir.
Q. What were you charged with?
A. Carrying concealed weapons.

Q. And you had your pistol and rifle with you I suppose?
A. Had my rifle; didn't have any pistol.
Q. Were you fined? A. Yes, sir.
Q. Did you ever arrest or take into custody anyone down there besides Mr. A. N. Berkle? A. No, sir.
Q. He is the only man that you stopped or any other crowd with you that you know of? A. Yes, sir.
Q. That you stopped and took to the camp? A. Yes, sir.
Q. And exercised any restraint over, is that right?
A. Yes, sir.
Q. Did you keep him there that night?
A. He stayed around there, yes, sir.
Q. Did he stay willingly? A. Yes, sir.
Q. Didn't he tell you that he wanted to go home?
A. He did before we went in there.
Q. Didn't he tell you after he got there that he wanted to go home? A. Not me, he didn't.
660 Q. Did you hear him tell anyone else?
A. I don't remember if I did.
Q. He was living with his mother, he told you, his aged mother and that she was alone and begged permission to phone her and that was refused him? Is that right?
A. I don't know anything about the phoning; I didn't have anything to do with it.
Q. Didn't he ask that you allow him to go to his house?
A. Yes, sir.
Q. Didn't he ask that he be allowed to phone?
A. He didn't ask me.
Q. You do know that he asked to be allowed to go home?
A. Yes, sir.
Q. But as to the phoning you don't know anything about that? A. No, sir.
Q. Did you have a pistol as well as a rifle on that occasion? A. No sir.
Q. Do you remember the occasion of the pistol being put up against his head on the outside of the tent?
A. There wasn't any put up there that I know of.
Q. I believe that is all.

Mr. Lucas (Reading):

Redirect Examination.

Q. You have testified that you went to mine No. 4 on May 5th or May 6th. If the so-called riot when the men met at the school house and marched to the mine was on April 6th isn't it true that you went to the mine on April 5th instead of May 5th?

A. It was May that I went to work there.

661 Q. You remember distinctly seeing the crowd meet at the school house don't you? A. Yes, sir.

Q. And you remember the beating up of Barnes and Bailey at the ropes? A. Yes, sir.

Q. You remember when Looper and Sylesberry were drawing the fires there? A. Yes, sir.

Q. You have testified to all of that this morning, haven't you, Mr. Cheek? A. Yes, sir.

Q. Then if that all happened April 6th, instead of May 6th, and you saw it, you must have been there on April 6th, wasn't you?

A. I was there at the time of this riot, I was there.

Q. So you must be mistaken in saying that you went there the first of May?

A. I was mistaken when I said that it was in May. It was in April that I was there.

Q. Now can you tell us any more definitely when it was that you volunteered in the regular army? Was it a year ago this last July or two years ago? Was it a year ago or two years ago this last July?

A. One year ago this last July.

Q. You were asked on cross-examination if you did any shooting the night that you took Nick Berkle down to the mine and you said no. Was there any shooting done there?

A. Yes, sir.

662 Q. Who did it?

A. I don't know who they were; some of the crowd that stood out where he came from.

Q. Where had you seen Berkle and these other men before they came over to where you were?

A Out there at the post where the electric power came from.

Q. Just those two out there? A. Yes, sir.

Q. Where were the others at that time?

A. Across opposite the public road from the school house in the bushes.

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663 Mr. Lucas: I will read the deposition of ROLAND FORD BARNES, taken at Chicago, on the 18th day of April, 1917, beginning on page 1202 of the record of the former proceedings.

Q. What is your full name, Mr. Barnes?

A. Roland Ford Barnes.

Q. Where do you live now?

A. Stillwater, Minnesota.
Q. What is your business?
A. Well, my business—I have been employed for many years as a police officer, handling guards, detective work, and so forth.
Q. How old are you, Mr. Barnes?
A. I am fifty-three past.
Q. Were you employed in the Western District of Arkansas in or around Forth Smith and Hartford, Arkansas, in March of 1914? A. Yes, sir.
Q. Will you state when you entered upon that employment?
A. That would be the latter part of March and some of April.
Q. By whom were you employed?
A. The Bache-Denmain Coal Company; at least they advised me they were—
Q. Who employed you?
A. Well, I was sent there—I was sent there from Minneapolis—that was where I had been working for about two years.
Q. To whom did you report?
A. I reported to Mr. C. H. Finley, who was an official of that company.
Q. That was in Fort Smith?
664 A. Yes, sir. That was on Wednesday, the 25th of March, 1914.
Q. From whom did you receive instructions as to your work? A. From Mr. C. H. Finley and Mr. Bache also.
Q. What were those instructions, Mr. Barnes?
A. Well, I met Mr. Finley first— Mr. Bache wasn't there. He came about three days after I arrived there. Mr. Finley set about to advise me in regard to conditions at their mines, particularly Shaft No. 4, Prairie Creek, near Midland. He discussed those matters with me, and advise me that he was going to change—intending to change from closed shop to open shop.
Q. He intended changing from closed shop to open shop?
A. The policy of running the mines, yes sir.
Q. What were you to do?
A. My work was to be looking after guards and protecting their property.
Q. Whose property?
A. The property of this Coal Company that I mentioned—the Bache-Denman Coal Company.
Q. What were you to do in connection with that work?

A. In connection with that work? Well, I was to act as captain of their guards, and consulting with Mr. Bache when he got there, and Mr. Finley at any time, in regard to the protection of their property and the best way to handle it.

Q. What were you to do as the actual details of protecing the property?

A. Well, I was to visit this mine with Mr. Finley. That is what he proposed after we had this talk—to visit this
665 Mine No. 4 first. We went to Midland and then visited this Mine No. 4. We went all around that property, and went to one other mine or shaft near there, probably about a mile from there—I think he called it the Prairie Creek Mine, if I am not mistaken. There was nothing doing there then. There was a man working around there trying to clean up a little. That was about the—I think about the 31st of March that we went down there. Well, we made two trips there. We went down there, I believe, on the 27th and the 31st. We made about two trips down there, and stayed at Midland, about three miles from Mine No. 4, as there was no place to stay there.

Q. Did you during those days have a conference with the attorney for the Company?

A. Yes, sir. We started in down there to arrange things and look after the property, yes. We had some talk—

Q. Whom did you see?

A. Mr. McDonough and Judge Reed at Fort Smith.

Q. Mr. McDonough and Judge Reed?

A. Yes, sir.

Q. Did Mr. McDonough and Judge Reed give you any instructions as to your work there?

A. Not exactly regarding my work, but regarding the law, yes, sir.

Q. What did they tell you as to what the law was?

A. Well, they said that the law provided that you could not carry no fire arms under your clothes, nor strapped to your body, and that there wasn't no chance to be deputies, that you only was an ordinary citizen as an agent or a guard,
666 but that—well he advised me at that time, and Mr. Bache was present, that the guards could be provided with rifles or shot guns to carry in their hands while they was working around this Mine No. 4, or to have to protect themselves—they only could be used to protect themselves—they only could be used to protect themselves from being killed or from somebody that might come to take the life of another, or burn up the property, or blow it up in any way, and in preventing that, if we would be molested in any way that our

lives would be in danger, that we could use these guns, those rifles—no other way. That constituted the advice—about—that Judge Reed and Mr McDonough give—it was along that line. It is three years ago—to the best of my recollection that is the way they advised.

Q. Were you told anything as to not using these firearms for any purpose except those you have named?

A. Just exactly as I have mentioned. That is the way I was instructed. In fact, I was pretty thoroughly familiar with the matter of using those means.

Q. How many men did the Company have in its employ when it started to operate open shop on the 4th of April?

A. That was, I believe, on the Saturday—I think it was the 4th of April.

Q. About Saturday.

A. They had somewheres around fifteen or twenty men, I believe.

Q. When did you go to the mine to take up your duties as captain of the guards?

A. To stay there?

667 Q. Yes.

A. I think it was about Wednesday,—that would be the first of April, I believe, wouldn't it?—I think it was about April first. We went there to stay at a little frame building that Mr. Bache had rigged up for us and put a cook there, about three blocks from the—

Q. How many guards were there with you?

A. When we started there—there were three or four guards to start in with, and the most we had—yes, I believe as near as I can recollect the most we had was six.

Q. On what day did you first have any personal encounter or meeting with any men coming to the mine from the outside? A. From the outside? That was not working there?

Q. Yes.

A. Well, let's see now—let's see—Saturday, the 4th, was the first that they had opened up there to do any regular work.

Q. What were they doing on Saturday?

A. Well, they started on Saturday morning—now, Friday afternoon there was quite a few persons, men, had congregated around near the mine, and stood around the road and the field near this office, that was on the grounds there.

Q. Was that outside or inside the so-called enclosure of the wire rope?

A. It was outside, but there was no trouble or differences with any body on that day.

Q. Did you recognize any of the men in that crowd?
A. On Friday?
668 Q. Yes.
A. There was men pointed out to me by Mr. Looper that worked at the mine there. The name of Clint Burrows—he pointed him out to me, and told me that he was one of the men that had worked at the mine, was one of the miners that had been working at the mine, and the reason that he pointed this man out, he was advising me to look out for that man. He advised me to look out for that man. He went on to state something in regard to his record.
Q. You needen't say what Looper said to you.
A. No, sir.
Q. On Saturday, April 4th, what were they doing at the mine? What were the Company employes doing at the 1802 mine?
A. They had started to operate on a very small scale.
Q. By operation what do you mean?
A. They had some men in the mine.
Q. Digging coal?
A. Yes, and bringing it up and emptying it into the chute.
Q. Did you see any coal hoisted?
A. Yes sir, I'm explaining. It was hoisted and lifted into two different cars that day.
Q. On Saturday whom did you meet—some person or persons coming from the outside of the mine?
A. On Saturday?
Q. Yes.
A. Well, to my best recollection on Saturday—Saturday forenoon there was quite a number of persons had con-
669 gregated on the outside of this enclosure that you spoke of and had set on some gondola cars that was empty out on a branch that ran into this mine No. 4.
Q. Was that outside of the enclosure?
A. Yes, sir, outside. They had been sitting on those cars and around, and they hadn't made any effort to come in over the enclosure in the forenoon.
Q. Did you see Constable Slankard of Hartford there on that day?
A. On Saturday—I believe Saturday afternoon—sometime Saturday—I forget which. Mr. Bache was over on that day, when we started out. Himself and Mr. Slankard came there that day. I forget just what time it was.
Q. Whom did Mr. Slankard see?
A. Mr. Slankard had a talk with Mr. Bache. I was present. The three of us was joined in a talk in regard to

—Mr. Bache was explaining to him what he intended to do, and wanted to pull matters through without any trouble, and he introduced me and explained to him what I was there for, as best he could, and both Mr. Bache and I at the time asked Mr. Slankard's co-operation in trying to keep peace, and explained what we intended to do. At that time this enclosure was made. There was an enclosure made around the mine.

Q. State what the enclosure was.

A. Well, there was a portion of it was rope and wire—a steel wire cable. And some places the construction was of rope. It was just put on stakes around the shaft, around the mine there, probably—well, it may be a couple of hun-
670 dred feet from the main shaft, that is, in circumference right around it was a couple of hundred feet from the building at any point, and probably a little more.

Q. Just the single wire cable or rope?

A. Yes, sir, there was posts put up, and they was driven like that—(indicating)—and this wire cable was spiked to it, fastened to it. This little office that was on the grounds made a portion of the fence. The fence came up to each side of the enclosure there at the office.

Q. So that the office was part of the enclosure?

A. Yes, sir.

Q. Did Mr. Slankard say anything to you that day or to Mr. Bache in your hearing?

A. Well, in discussing the feeling of the miners, Mr. Slankard was advising Mr. Bache in regards to their feeling apparently—that he thought it would be better if his guards wouldn't carry those rifles, and Mr. Bache explained that he was not in any violation of law, and it was the only means of any protection that his guards could have. He was advised by Mr. Reed and Judge McDonough in regard to the law. He went on to explain to Mr. Slankard that, at no time was he going to use them, or attempt to use them, or make any hard feelings in any way with them and just simply had them for protection if it was to save their own life or that of another. Well, Mr. Slankard said it was all right in that way, but that it made a lot of hard feeling, and they was doing a lot of talking, and it might raise some trouble. Mr. Bache said
671 the guards wasn't going to make any trouble or use them in any way, or attempt to use them or put them at anybody. He also suggested to Mr. Slankard that if he would talk with the men and advise them, and use his judgment in advising them, he thought there would be no trouble at all. That was about the size of the conversation.

Q. Did Mr. Slankard make any promises in regard to that co-operation?

A. Yes, he did. He promised Mr. Bache he would do everything he could. He also advised Mr. Bache he had a great deal of influence over the men at that time.

Q. What occurred, if anything, on Sunday, April 5th?

A. There was something else that I might mention that occurred on Saturday in regard to the—

Q. Please state what it was?

A. On Saturday afternoon, shortly after the noon hour, the men had their dinner and went to work in the mine. There was apparently the same number or bunch of men that had been there in the forenoon, that came back after dinner, and was around those cars and outside of the enclosure, and Clint Burrows and two or three other men came up onto another track that was close by this track, that came right into the mine, into the shaft. Where this wire cable was stretched across the track as a fence, of course, and all around on those wire cables and different places on posts, there was signs that Mr. Bache had printed and put up, white signs with big black letters printed on them, "No Trespassing or Entering to this property." I believe that was the substance of the lettering.

672 Q. Now, will you state what occurred on Sunday?

A. Well, in connection with this, Mr. Burrows and these two or three men had came up and had took hold of this rope. They put their hands on it, and was going to climb over it, I happened to be standing off—well, there was a Mr. J. R. Bailey and I. We wasn't very close to each other, but we could see each other.

Q. Was Bailey another guard?

A. Yes, sir. I noticed those men when they came there, and Clint Burrows was with them. It was Saturday afternoon. I asked them which way they were going. They said they wanted to go into the mine to see somebody—they named somebody that was working in the mine. I told them they couldn't go over that fence or inside that enclosure, that the company had erected that there, and Mr. Bache had advised me to direct anybody that they mustn't go inside that enclosure. They went back a ways. They didn't go back far, and they didn't come in, but stood there discussing matters. We watched them, Mr. Bailey and I, but that was all that was said on that day.

Q. Now, what occurred on Sunday?

A. On Sunday—that would be the fifth. Well, there was no particular work going on in the mine. The men wasn't working on Sunday, as I recollect, with the exception of Mr.

Looper and one or two other men, who I forgot their names were about the mine kind of cleaning up and looking after things around the shaft, but there was no regular work going on that day.

Q. Did anything occur with reference to any man or persons being outside of the enclosure?

673 A. Yes, sir. Now, this—on this forenoon—the Saturday night previous I had been out quite late Saturday night, with three or four of the guards. We generally kept three or four guards working at night, and about two in the day, and I had been out quite late on Saturday night, and on Sunday forenoon I didn't get down, I believe—down to where—inside of this enclosure from the house where we was staying, which was about three blocks away—until about nine-thirty, I think it was—somewheres around then. Mr. Bailey was on duty around the yard, and Mr. Looper. He was looking after things on that Sunday forenoon, working as a guard. And about nine o'clock Mr. Bailey or Mr. Looper sent up to the house for me, that they wanted me down there. I came down inside of the enclosure and came over to the—right near the shaft—and I met Mr. Looper first, and he said that—just previous to meeting Mr. Looper on my way down to this enclosure from the house that I spoke of I noticed on my left where there was three or four box cars probably two box cars and two gondolo cars setting on this branch.

Q. Outside of the enclosure?

A. Yes. There was probably between twenty and thirty men. There was some of them up on top of the box cars, and some of them standing in the gondola cars, and some of them standing on the ground, and they was doing a lot of whooping and screeching and apparently having an altercation with some one and calling him names, and they was swearing and using bad language. They were very loud. I didn't pay no attention to them. I went on to meet Mr. Looper and see what the trouble was. I know they was setting—you know

674 how they was—but I didn't pay no attention to them.

On arriving at the shaft I met Mr. Looper, and I asked him what the trouble was, what was the trouble out there, what I was wanted for. He said that Mr. Bailwey wanted to see me. He says, "There seems to be trouble with those men on the cars. I guess they want to get after those men on the cars. I guess they want to get after those parties in the box cars." There was two box cars inside of the enclosure. They was made up in a way—one of them was—that they could do some cooking in it. There was two bunk houses there near these cars.

Q. By whom were those bunk houses occupied?

A. They were occupied—I don't know the people's names. There was two men had occupied those bunk houses, and their wives and children.

Q. Employes of the company?

A. Yes, sir. They had been sent for and come from some place, and they stayed right on the grounds. They had their wives with them. This little bunch composed, if I remember right, of three men and two women, and one or two little children. When I come to find out—Mr. Looper, he said he believed that they wanted to get those men out of there, is what they was after. So I started down towards the cars, and when I was going down towards the car this disturbance that I spoke of seemed to quiet down. There wasn't apparently very much said, and I met Mr Bailey coming up from the cars, the guard, and I asked him what the trouble was, and he said that the bunch of men that was out on the cars and standing around—

675 Q. Mr. Barnes, don't tell what Mr. Bailey told you. Tell what you saw or did.

A. Yes, sir, I can do that. That was all I saw.

Q. Did you see any rock throwing on that day?

A. When I was coming down I noticed some persons among the bunch that was throwing rocks toward the bunk house, and they was whooping and screeching—

Q. Did you recognize any persons in that crowd?

A. Clint Burrows was the only one I recognized that I can swear in the crowd. There was many others that I seen.

Q. Now, coming to Monday, April 6th, will you state what occurred on that day, beginning with the events of the morning? A. The events of the morning?

Q. Oh, just a minute—did you do anything on Sunday with reference to sending for a sheriff?

A. Well, that was just what I was getting at when I met Mr. Bailey. He advised me about this trouble.

Q. Don't tell what he told you, only what you did.

[Q.] No, sir, only what I learned, and knowing the promise that Mr. Slankard made to Mr. Bache, I thought it would be well to try and get hold of Mr. Slankard, and have him take care of anything outside of the enclosure to save trouble for fear they might come in. I went over to this little office where they had a telephone, and if I remember right, the clerk who was in this office, or some person there in charge, telephoned for Mr. Slankard, and Mr. Slankard came over

there on Sunday. He came inside of the enclosure.
676 Now, I'm not just sure whether Mr. Finley came to the grounds that afternoon or not, but it strikes me that it—I believe Mr. Finley was there when Mr. Slankard got there. However, Mr. Slankard came. I met him, and I believe—

Q. Did Mr. Slankard say anything on Sunday when he came?

A. After I explained about this trouble, and told him all about it, I told him in view of the fact that it was the Sabbath day, and everything was in peace and quiet at the mine and around, that it looked and sounded very bad for these men to be participating in the conduct that they were, and I asked him if he would go out on the cars and see them, and talk with them, and advise them, and try to take them away with him. He said he would, and he says, "I can handle them. They have been very noisy, and they hadn't any business coming out here this morning when there was nothing doing here." I says, "Mr. Slankard, it will be doing us a great favor if you will." He said he would. I explained to him about the trouble that was between those men and the persons that was in this bunk house. I explained all that matter to him and some little differences that Mr. Bailey had in keeping the men away, and Mr. Slankard, he says, "I'll attend to all this matter, Mr. Barnes, and there will be no more trouble here today." I stood there, and he went down to the cars, and he got up on the cars and talked to those men, and talked with the bunch on the ground. He talked to them for about twenty minutes. By that time there—well, they were nearly all gone. They had started over toward Hartford. Inside of a half hour he had every one of them away from there. On that day he seemed to take an interest in doing what he promised Mr. Bache he would do.

677 Q. Coming to Monday, April 6th, what occurred in the morning, Mr. Barnes?

A. In the morning the men all started to work as usual—did you want me to say anything about the handling of those guards, or the advice that I had gave them in regard to—pertaining to their duty?

Q. State what instruction, if any, you gave to the guards under you?

A. In the beginning this enclosure was erected through Mr. Bache's order. Probably two or three times a day I would come in contact with each one of these guards, as well as in the evening. I called each and every one of their attention to the instructions I had received from Judge Reed

and Mr. McDonough in regard to our duty, what we could do; and what we couldn't do. I think there was four or five of those rifles among the guards. I told each one of them that in no case in traveling about the enclosure or from the enclosure to the house—that was about the only place there was any traveling done—in carrying their rifle I told them to always carry it under their arm, with the muzzle pointing toward the ground, in no case to carry it in their hand, because in that way nobody could say if they wanted to that it was pointed at them. I told them not to carry it in any other way. I told them not to use that rifle unless it was to save their own life or that of another, and that would be where an attempt might be made, either night or day, of any person coming inside of this enclosure to fire or blow up the mine, or to bind or gag or beat up a guard in order that they might per-
678 form this work. I just happened to mention this in that way. I told them that would be the only time to attempt to use the rifle.

Q. Did you during your work at the mine, either yourself point a gun at anybody, or see any other guard point a gun at anybody?

A. No, sir, I did not, never at any time, no, sir. Moreover, I instructed those guards in connection with the advice about the rifle that when they would meet any person or persons, whether they might judge they were miners, or who they might be, to talk kindly to them, and not enter into any altercation in any way. I told them if anything was said to them that might be considered an insult to stand and not say anything, and to always keep inside of the enclosure at all times, that it wasn't necessary to go outside of the enclosure. I said if the miners came around to let them be around, that we wouldn't bother them, that we was only there to protect the immediate property inside of the enclosure. There was never a day that I didn't go over this with them, because I thought that it was really necessary to do that. I thought it was best to do that. Mr. Slankard also understood that I had issued those instructions, because I talked with him, and had mentioned this very thing in this way to him.

Q. Now, coming to Monday morning—what happened?

A. Well, the men went to work as usual, around fifteen or twenty of them.

Q. First with reference to the arrest of yourself and Mr. Bailey.

A. Well, that was some time Monday forenoon, April the sixth, I believe. Mr. Slankard and one other gentleman with him who said he was a deputy sheriff—I forget his name—

679 Q. Do you know whether that was Mr. Baker?

A. I believe it was Mr. Baker—had come inside of this enclosure and asked where Mr. Bailey was, He asked me, and I says, "He is somewhere around here," and I saw him and called him. Mr. Bailey came over, and Mr. Slankard informed us that he had a warrant for our arrest. I asked him to read it to us, to show it to us. He pulled out a piece of blank paper that was filled in with lead pencil, but there was no charge of any description mentioned in the warrant, any more than I believe disturbing the peace, and I asked him what way we had disturbed the peace. He said he didn't know. He said, "That's all I know, what is written in here. You are charged with disturbing the peace yesterday, you and Mr. Bailey." He told us to consider ourselves under arrest.

Q. Did you notice who had sworn out those warrants? Did you notice by whom they were signed?

A. I think it was Clint Burrows, if I remember right. I didn't have the warrant in my hand, but Mr. Slankard stood nearby and read it, and I noticed that it was sworn to by Clint Burrows, if I remember right, as to my best recollection.

Q. What did you do then, or what did Mr. Slankard do?

A. Well, I told Mr Slankard, advised Mr. Slankard that knowing that I had—I felt that I hadn't done any more than any other day—going along peaceable, and really more peaceable than any other day—and hadn't done anything in any way to violate the law, I told him he knew that, and asked him what I had done. He said he didn't know, he couldn't

680 help it. I asked him to give us a chance to get bail. I went to this office and 'phoned up to Mr. Bache, and Mr. Bache instructed a foreman there, a superintendent—

Q. Cameron?

A. Yes, sir. He instructed him to write out a check for bail. Mr. Cameron did, and turned the check over to Mr. Slankard, and Mr. Slankard took them and went away.

Q. So you didn't leave the mine property?

A. No, sir. Mr. Slankard said that was all right, he would notify us when to appear.

Q. Do you know how much that bail was?

A. I believe it was three hundred dollars.

Q. For each of you or for both?

A. I can't swear positive. I know it was three hundred dollars.

Q. What was the outcome of that proceeding? Were you called into court at some subsequent day? A. No, sir.

Q. You don't know then what was the disposition of the case?

A. I believe the following Tuesday or Wednesday had been set to have us go into court, but we was in the hospital then—Sparks Memorial Hospital in Fort Smith. We went there on Monday evening, and Mr. Bache said he would take care of the matter so that we wouldn't have to go to court, he would attend to it and arrange it.

Q. After the departure of Mr. Slankard with your bail bond what happened?

A. What happened? Well—let's see. Mr. Bailey and I was on duty. We was the only two. I believe the rest
681 of the guards was out at night, and was sleeping, and there was only us two on duty. About ten o'clock there was a man came. I believe he called himself Mr. Breen.

Q. Was it Bean?

A. I don't know how he spelled it, but I thought his name was Breen. He said he was a deputy sheriff, and wanted to get acquainted with me. I shook hands with him and told him who I was. We talked a little while, and he went away. He went over in the direction of a school house—

Q. What time was this?

A. I believe it was about half past ten or eleven.

Q. What did he say to you?

A. This man that said he was a deputy sheriff?

Q. What did he say to you?

A. He didn't say a great deal. We discussed the weather, and he didn't say much about conditions or anything. He didn't discuss matters, and I didn't myself, any more than that he said, if I remember, that there was something going to take place in the afternoon, and he says, "That's the reason I am around, to see what's going on." I didn't ask him what he meant, and he went away.

Q. He went over toward the school house?

A. Yes, sir.

Q. What did you see after that?

A. About eleven o'clock—it might have been between eleven and twelve—Mr. Bailey and I heard a band playing, apparently over in the direction of Hartford. It was
682 toward this school house. It was only a few minutes after that until we noticed there was a good many people marching, a good many men and women and children marching after this band.

Q. Toward the school house?

A. I should judge about four or five hundred persons, mostly men.

Q. Toward the school house? A. Yes.

Q. From what direction?

A. I believe from Hartford. I wasn't much acquainted—

Q. As you looked at the school house from the mine was it left or right?

A. It was the left. And later, after that, there was that many more came from the right.

Q. Do you know whether that was from Huntington?

A. I believe it was. I am not sure. I was told—

Q. Don't state what you were told. What happened then, Mr. Barnes?

A. Well, it was somewheres around the noon hour then, or probably a little after twelve. We had our lunch brought down, and we eat our lunch inside of the enclosure, Mr. Bailey and I, and we witnessed those people over at the school house, and they was standing around and playing the band, and conversing with each other, apparently. We could see them quite plain. They appeared during this time to be a few more men draggling along from here and there, going to where this bunch of people were, and we judged there was between twelve and fifteen hundred, and they played the band there and made speeches there. We could hear them speak-
683 ing. They were standing in a buggy and standing around. There was a good many went in the school house, but they didn't stay there very long. After we got our dinner they still was there. I think it was about one o'clock —there was a man or two came over from that bunch, from the school house, and came into where Superintendent Cameron was. They went away again.

Q. Do you know whether one of those men was Slankard?

A. No, sir, I do not. I wasn't close enough to know. They had horses, they was on horse back. Shortly after that the clerk that was in this office, he came out and went around and see a few of the men around the mine. He had some talk with them. I don't know the nature of the talk, any more than what I learned afterwards, but I learned afterward—

Q. Never mind. Don't tell what you learned. Go on, Mr. Barnes. Tell this story of what happened.

A. About one-thirty, between one-thirty and two o'clock, along there, I had—about one-thirty I had went up to this little frame building where we were stoppimg. I had wanted to get some mail to sent out with Mr. Cameron to the post office. When I started from the house to go down, this band was playing, and all those persons that I described at the school house were following the band over towards the mine. When I got down to the mine I met Mr. Bailey, this guard at the mine. By that time this bunch of people was down to the little office and to this fence, the enclosure. They surrounded

this little office and a considerable portion of the fence
684 adjoining the office, probably taking up about a hundred or hundred and fifty feet along the fence. The rest of the men and the balance of them was standing out behind—making a bunch of people of between twelve and fifteen hundred, as near as we could judge. Mr. Bailey and I stood there talking. They was standing down there at this fence—they hadn't appeared to start any trouble yet, or to do anything. They was just standing there looking. So I told Mr. Bailey, I says, "Mr. Bailey, they must be going to mob us this morning, and take away our firearms from us, our rifles from us." We had been expecting this—we was. I says to Mr. Bailey, I says, "We are not going over there to issue any advice or anything, unless they commence taking down the fence or coming in," and I says, "When they do, if they do, we will be very careful what we say, and in any case your gun, have the muzzle toward the ground, under your arm. Don't make any attempt to use it." I says, if we are mobbed by them we'll turn over our rifles, and anything we have, and let them take possession if they want to. We can't help it. There is only two of us on duty," I says to Mr. Bailey, I says, pointing out to him. "You can walk around inside of the enclosure in this direction, and I'll start around the other way." We wasn't going to pay any attention to them, just see what they did, not going over to them unless they made some attempt to destroy the property. Mr. Bailey walked over where they was, only a little more to the right of them, and I started down across the track, where this fence that I spoke of was. Some of the number spoke to Mr. Bailey, and when I
heard them I turned around, and Mr. Bailey then turned
685 to me, and he says, "Those men here wants to see you." I says, "All right." So Mr. Bailey stood right where he was. He was probably within fifty feet of this fence where the bunch of people stood. I come over to him, and I says, "What do they want?" He says, "I don't know. They want to see you." I says "All right, let's go down." So Mr. Bailey and I started towards the bunch. As we was nearing the bunch I noticed at that time that they had the fence all broken down for a portion of a hundred feet from the end of the office, and they was standing on the wire cable, a portion of the men was, probably a couple of hundred was, standing all bunched up. There was one man—there was one little old gentleman, apparently a cripple, crippled in some way, and he walked a little lame. He stepped inside of the enclosure and he walked towards us, and he had a little American flag in his hand, and he waved it, and was laughing. Well, it kind of

looked to us in a way that they was going to be good natured, and wanted to find out something, and it wasn't going to amount to much. As I was going towards them I took off my hat and waved it, and bowed to them, and I went down and shook hands with him, and he says, "There's a committee wants to talk to you." Mr. Bailey and I stepped over towards the fence where they was all standing on the cable. As we was going towards the bunch, just after leaving this old gentleman, and probably being within twenty feet of the fence, there was a good sized rock struck my head. It didn't cut my head; it cut my hat. I put up my hand and my hat was all crushed in. The rock had fell right near me. I didn't pay any attention to it, no more than that. I didn't ask where
686 it came from or look where it came from, because I knowed there was something doing then, and there was nothing said, and I didn't ask any question. In fact I made no motion any more than if it hadn't happened. When we got down within three or four feet of the fence, Mr. Bailey and I stopped, and I stood my rifle behind my back, putting the muzzle down to the ground, and let it stand like that—(indicating). I said "How do you do, gentlemen?" Mr. Bailey placed his rifle the same way. There was one man—I don't know his name. I would know him if I seen him—a young fellow somewheres around twenty years of age, I believe. He said, "What is you sons of bitches carrying those guns for?" I knowed it wouldn't do for us to say a word at all or make any remark. I had my mind made up as to what was going to happen. So I smiled, "Well," I says, looking at this young fellow. I says, "Guns are carried sometimes to hunt," but I says, "in this case we have been furnished the rifles to protect our lives and this property if we have to." That was my answer to them. I was smiling when I said it. There was somebody else near this man that I spoke of, that spoke up, and he said, "Well, we know you, you son of a bitch", he says, "we know you. You've been here before, or in this part of the country. We know you. You've been into strike trouble here before some place." I don't know who he was. I made the answer, I says, "No, sir", I says, "I never was in this part of the country, or any strike trouble in my life before." There was some other voice says, "Yes, you son of a bitch, we know you was. In 1908 you was down here in Oklahoma. There was trouble there, and you was in that—you was
687 heading that there." I says, "No, sir, I never was." There was several voices spoke up, and said, "We know

better. We know that you were." With that, about that time as near as I can remember, there was five or six persons had commenced to step in over the line and crowd in, and as they did apparently the rest was coming, so I advised them, I says "Gentlemen", I says, "we would wish that you gentlemen would stay outside of the enclosure We are glad to talk with you in any way we can or co-operate with you in any way we can, but don't come inside of this enclosure. This fence has been put here by the Company, by Mr. Bache's order, and we don't want anybody inside." There was a couple of them came right up where we was standing. Mr. Bailey and I went to step up, and I put up my hand, and I says, "Gentlemen, don't come any further, or break down this fence any more." They says, "We don't want to pay any attention to you, or Mr. Bache, or anybody else. We come to take charge of this property, and we'll show you where you are at." I says, "All right." So about that time Mr. Slankard was on horseback, and I think Mr. Baker was with him, and one or two other gentlemen rode right over the fence and come up to us. I asked Mr. Slankard, I says, "Mr. Slankard, those men. "I says, "I believe I" shave to call upon you." I says, 'to suppress the disturbance and push these men back out of the enclosure. Will you kindly help us?" He says, "I —will in a little while. I have some business at the office with Mr. Cameron. There is a committee of us have some business with him." They started over toward the office, which was some fifty or seventy feet from where we stood. As
688 soon as they went, probably three or four hundred of this bunch surrounded Mr. Bailey and I there. came all around us. They surrounded us. The only man that I recognized that I could call by name was Clint Burrows. He got right up near where I stood. There was some elderly gentlemen that stood right near him. Those two men spoke up. They says, "We, we'll soon set things out, or see what we're going to do." It seemed to me right at that time that there was great danger—the reason that I believe that, there was some of those men apparently looked to be intoxicated—by their actions—and it stuck me very forcible then that our lives were in danger, and I asked those two men that stood near me—this man Burrows and the other one—I forgot his name, but he was an elderly gentlemen—I says, "Boys, before you gentlemen go any further, wait until Mr. Slankard and this committee comes out, and see what they say." This elderly gentleman spoke up, and says, "Yes, boys, that will be best for you not to go any further until Mr. Slankard comes out." Some fellow yelled out,—I don't know who it was. He

says, "If you had another drink you would be all right. We're going to attend to this matter ourselves right now. Mr. Bailey and I was standing there with he guns in the same position. I motioned to Mr. Bailey —"Let's try to push through the crowd to get away from them, "because I seen they was going to attack us. We started, and went probably two or three steps, and in taking those steps we had to shift our guns along by our side, and they put up their hands and said, "Stop, you fellows aren't going any further." I says, "All right, gentlemen." So at that time Clint Bur-
689 rows and one other man—I don't know who he was—there might have been three of them—they dropped down on their knees and dragged my gun out of my hands. At the same time somebody took Mr. Bailey's rifle. As soon as they done that, I says, "All right, gentlemen, you can have those rifles, and welcome." I says, "We never intended to use them unless some one was going to kill us. We don't anticipate that." I put up my hands. "We surrender to you. We're through. We quit. You've come in and broke down the fence. There's only two of us, and there's twelve or fifteen hundred of you. We put up our hands." I put up my hands and Mr. Bailey put up his. I says, "We're through. We quit." I hadn't those words out of my mouth until Mr. Burrows was right by my side, or almost in front of me. He riz the rifle and the butt of it come down on my shoulder—the back of my head—here. At that time there was apparently three or four struck me at the same time, at the top of the head, at the back of the head, and kicked me. I went down in a heap. While I was down I was kicked. I could hear Mr. Bailey singing out nearby me. I riz to my feet. I grabbed hold of somebody by the waist, and I riz up. I says, 'Gentlemen for God's sake don't kill us. We're men. We're got families, and we don't want to be killed or have any serious trouble here. Let us get out of here. I told you that before." At that time somebody had hit me again on the side of the head—well, I got it here—(indicating)—and on the top of the head, and on the shoulders. I went down again, and struck a puddle of water. As soon as I was down the water brought me to, and I jumped to my feet, and I ran probably three or four steps.
690 Somebody had a rifle and was making another swing at me. The rifle came with in probably a foot of my head. It didn't touch me. I was hit again by something, apparently like a blunt instrument or a sand bag. I was only hit once with it, and I went down. I got up, and went down again. At that time I was bleeding from the mouth and from the ears. I was kicked so bad and beat that I hardly knew I was doing. Mr. Bailey, I could hear him yelling, and I started to yell my-

self and sing out for Slankard and "For God's sake." At about that time Mr. Slankard came along, and one or two men with him, and he got right in front of where I was. There was some man standing over me with a rifle, and he took the rifle from him. He says, "Boys, you have done enough to these men. Let up—let up—stop." They apparently stopped. I come out and stood alongside of Mr. Slankard, and I see Mr. Bailey standing there, and all bleeding. He was bleeding from the nose, and I noticed one of his cheeks was all swelled up. I taken a handkerchief from around my neck, and was wiping the blood off my face I could hardly see for blood. I says to Mr. Bailey, "Come on, let's get out of here." So I started from there to go by the shaft up towards the house where he was staying. When I got along by the shaft, by the mine—you had to go by it—up to the house—they—I started to look back, turned around, and looked over my shoulder, and I see apparently about a dozen coming along in the same direction that I was going, and there was a bunch of them started in another direction, over towards the blacksmith shop, I believe it was, which was on the grounds of the
691 mine. When I got along a few feet further I fell. I got so weak that I fell. I jumped to my feet again, and I looked back, and they was coming pretty close. I started off as fast as I could. I went up to the house where we was staying. There was four or five other guards asleep. I come in and asked for some water to wash me. Some of them got up and helped me, and held me up while I was washing. I told them what had happened. When I had some water I stepped toward the door, and they stepped out with me. We looked down toward the shaft, and we see them going up into the shaft, and going into the blacksmith shop, and apparently going into every building that was in the enclosure. They appeared to be tearing everything, and hollering, and says, "This is a union man's country, and We'll drive these sons of bitches out of here, every man of them." There was a lot of them coming toward the house as hard as they could run—three men ahead, and eight or ten after that. Those three men made the house where we were staying, the guard house, we called it, before the bunch got up to it. However there was two gentlemen came right up after those three men came in, and one of them was pretty well dressed gentleman, apparently he was a business man. He looked at me and he says, "What is you fellows going to do? Are you going to leave here?" I said "Yes, sir. Some of us has got to get to a hospital," I says, "as soon as we can." I says, "We're going to leave here. I told them that. I don't know why they

wanted to do us up like that when we hadn't done anything to them." He says, "If you want to get out of here with your lives and not blowed up or anything, you will have to
692 get out of here this afternoon." I says, "Yes, sir, that's what we're going to do." So he started away. A few minutes after that there was an old gentlemen that two or three or the men had dragged along, was carrying along, with his head all cut and bleeding—I forgot his name—

Q. Was his name Sylsberry?

A. That's the name. They carried him in and washed the blood off him, and by that time Mr. Bailey come. Mr. Bailey didn't come along with me when I come. He said he run into the office where Mr. Cameron was, when I asked him why he didn't come with me.

Q. Never mind what he said.

A. That's what I—

Q. Just what you saw.

A. Yes, sir, yes, sir. So I believe I sent for Mr. Cameron then, or Mr. Cameron came up to see us. Mr. Sylsberry was there, and Bailey and myself.

Q. Was Looper there?

A. He was injured. I was done up so much I could hardly talk myself. I told them to call up Mr. Bache and describe to him over the phone that something had happened, and to send some automobiles down there to take us fellows out of there told them to advise him that none of us would remain there any longer. Some of us had to go to a hospital, to a doctor. To send an automobile for us, as we couldn't remain there any longer. Mr. Cameron did this, and somewhere's around four o'clock I believe it was, Mr. Finely came down with an automobile, and some other gentlemen. There
693 was two or three autos—two that I remember of—I think there was three that took all us guards out of there, and our baggage.

Q. Where did he take you?

A. He took some of us to Sparks Memorial Hospital, at Fort Smith.

Q. Did you go to the Sparks Memorial Hospital?

A. Yes, sir.

Q. Who else went with you?

A. Mr. Bailey and Mr. Sylsberry and Mr. Looper.

Q. How long were you in the hospital?

A. Let's see— that was the evening of the 6th. I was there seven or eight days, to my best recollection.

Q. Were you there because you were sick, or was it simply and solely on account of these injuries that you received on that day?

A. It was on account of the injuries I received that day that I had to go to the hospital.

Q. Do you know what doctor treated you?

A. I forget the physician's name. I know it at the time. He was a doctor that I believe Mr. Bache recommended him as one of the best doctors.

Q. Do you remember whether it was Dr. Cooper?

A. I do not. I forget his name.

Q. What did you do after you were released from the hospital?

A. Released from the Hospital. I started for Minneapolis.

Q. You didn't go back to the mines again?

A. No, sir, I did not.

Q. One more question, Mr. Barnes. At any time during the period that you worked at the mines, did you go over in-
694 to what was called Frogtown? You know what Frogtown was—the settlement called Frogtown?

A. No, sir, I don't remember about it.

Q. Did you at anytime during the period that you worked at the mines go outside of the enclosure and do any shooting with your rifles?

A. No, sir, we done no shooting outside of or inside of the enclose. I never did, and never knowed any other guard to do it.

Q. You never knew of any guard shooting any fire arms during the period that you were there?

A. No, sir, I never did, not witnessed it or heard tell of it —not pointed a gun at anybody.

Q. And you knew nothing about a suppose attack on any of the camps around outside of the mines—about any guards going out and attacking a union camp?

A. No, sir, I never did, never heard tell of it at all in my experience there.

Q. You never participated in any such things?

A. No, sir, I did not. In fact we worked in every possible way to avoid. That's why I sent for Mr. Slankard and cooperated with him. I didn't want anything to happen, because I knowed if it did we was simply powerless. We had no notion of doing it. We had every opporthunity to do it. If we had ever raised a rifle that day it would be an end of us."

Mr. Lucas: That is the close of the direct examination.

The Court: I think we will suspend here until ten o'clock tomorrow morning.

695 (Whereupon, after the usual admonition to the jury, an adjournment was taken until Wednesday, October 17, 1923, at ten o'clock A. M.)

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696 Wednesday, October 17th, 1923.
10:00 o'clock, A. M.

Pursuant to adjournment, at 10:00 o'clock A. M., on Wednesday, October 17th, 1923, Court reconvened, the parties appearing as before, and the following proceedings were had and entered of record:

The Court: Proceed with the trial, Gentlemen.

Mr. Grant: I will read to the jury the cross-examination of the witness Barnes, omitting portions of it.

Mr. Grant (reading):

"Q. Mr. Barnes, what is your occupation?

A. My occupation—well for the past twenty-three years I have been— my occupation for the past twenty-three years has been acting as police officer, chief of police, captain of police, captain of guards, and doing detective work, which is connected with my work all through.

Q. Are you a member of any detective agency?

A. Not at this time, no, sir.

Q. Were you at the time that you were sent to Prairie Creek, Arkansas, a member of any detective agency?

A. Yes, sir, I was.

Q. Name the agency?

A. William J. Burn's Detective Agency.

Q. At that particular point?

A. What is it, sir?

Q. At what particular point?

A. I worked out of Minneapolis, Minnesota. That was their headquarters. I had worked out of that office quite a while. In fact, I was—

697 Q. How long were you a member of the Burn's Detective Agency?

A. How long at that time, when I went—

Q. Yes, sir.

A. Let's see—that was 1914. Well, I was somewhere around one year, as near as I can remember.

Q. About a year?

A. Just about, yes, sir.

Q. Was that during the year 1914, or preceding that period?

A. Well, that would be a portion of 1913 and 1914, yes, sir, to make up that year.

Q. You say the William J. Burn's Detective Agency?

A. Yes, sir.

Q. Is that the same Burns that was indicted in Atlanta here some time back in connection with the Leo Frank Case? Is that the man?

A. I am not familiar with the case, sir. I can't say. I can't answer that question.

Q. Is there more than one William J. Burns Detective Agency?

A. No, sir, not that I know of.

Q. Is he the William J. Burns that was fined here a while back for stealing a lot of papers out of some lawyer's office somewhere in Missouri?

A. I never heard tell of it.

Q. You didn't read about it?

A. No, sir, I did not.

Q. Where does he live? A. Who?

Q. Burns.

A. William J. Burns? I don't know his place of resi-
698 dence, but I learned while working with him his main office is in New York City. There are several offices in the principal cities of the world.

Q. Were you head of that particular branch of the Burns Agency at Minneapolis at the time you were sent to Prairie Creek, Arkansas? A. Was I what?

Q. Were you head of that branch? A. No, sir.

Q. Who was head of that branch at that time?

A. Managing the Minneapolis office?

Q. Yes, sir. A. Charles F. Trotter.

Q. Is he there now?

A. Well, I couldn't say, sir, if he is there now or not. I understand that he is managing that office. I don't know whether he is there now or not, at this particular time, I couldn't say.

Q. You say you were chief of police?

A. Yes, sir, I have been.

Q. At what place?

A. Stillwater, Minnesota.

Q. Stillwater, Minnesota? A. Yes, sir.

Q. When were you chief of police, and how long?

A. I was connected with that department fourteen years. I was six years captain of police, and eight years chief of police in the City of Stillwater.

Q. What years did your employment as chief of police cover? A. What years?

699 Q. Yes, sir.

A. I left the department—let's see—I left that department four years ago this April. That would date back to 1913, wouldn't it—April, 1913? Well, for fourteen years, dating from that back.

Q. You were chief of police up to four years ago, during the eight years preceding the four years referred to?

A. Yes, sir.

Q. Were you ever chief of police in any other city other than Stillwater, Minnesota? A. No, sir.

Q. How long have you lived in Stillwater?

A. Nearly thirty-five years, or around thereabout. That is I haven't lived there steady. My family has.

Q. Are you a native of that state?

A. I wasn't born in Minnesota, no, sir.

Q. Where were you born?

A. I was born in Canada.

Q. Canada? A. Yes, sir.

Q. How long have you lived in the United States?

A. Well, between thirty-five and thirty-six years, around thirty-five or thirty-six years.

Q. Preceding what period, from the time you were born in Canada, where did you live?

A. Previous to coming to the United States, to Minnesota?

Q. Coming to the United States—where did you live?

A. Where did I live?

Q. Yes, sir.

A. Why, my birthplace and home was Rishebuckto, New Brunswick.

Q. New Brunswick.

700 A. Yes, sir. My home was about twelve miles from that town. That was the nearest town.

* * * * * * * *

Q. Now, where were you stationed the first year of your service with the Burns Detective Agency?

A. Calumet, Michigan.

Q. Where? A. Calumet, Michigan.

Q. Were you in Calumet, Michigan, in 1912?

A. In 1912?

Q. Yes.

A. No. I was with the Stillwater Police force in 1912.

Q. What years were you stationed at Calumet, Michigan?

A. Beginning with the year—let's see—the early part of 1913.

Q. 1913? A. Yes, sir.

Q. What were you doing up there?

A. I was there with a number of men from our agency at that time in that strike, the copper country strike. I was a body guard for James McNaughton, General Manager and Vice-President of the Calumet and Hekla Mine Company.

Q. Was anyone killed at that strike?

A. I never seen anyone killed. I heard tell of a lot of them.

Q. Were you present when anyone was shot?

A. No, sir, I never was.

Q. How long did you remain there?

A. Well, about five months.

Q. There was a lot of men killed during that five months, wasn't there?

701 A. I never seen any of them. I heard tell of a lot of them, if you allow me to say what I heard.

Q. You never saw? A. No, sir.

Q. You were never brought into court as a witness?

A. No, sir, never mixed up in any trouble.

Q. Was any man in your direct charge in your agency brought into court?

A. There wasn't any man under my charge.

Q. Were you under the direction of Burns himself?

A. No, sir, I was under the direction of James McNaughton, under his order, as his body guard, under his orders where to go and what to do.

Q. Who paid you for your work done at Prairie Creek, Arkansas? A. Who paid me for my work?

Q. Yes.

A. I was paid from the Burns Detective Agency's office at Kansas City.

Q. Can you tell us why it is that the Burns Agency—Detective Agency—sent you to Prairie Creek, Arkansas, to take charge of what you say were the guards of the Bache-Denman Coal Company, and paid you for your services—can you tell us why that was?

A. Well, sir, the only thing that I can advise you in regard to that, the William J. Burns Agency, or the manager of the Minneapolis office, didn't send me there for that particular work. He sent me direct to Fort Smith to see Mr. Bache and Mr. Finley of the Bache-Denman Coal Company. He didn't

know just exactly what they wanted me to do when I
702 got there. The only thing that he knowed was that I was wanted there to look after their mines and guard their property.

Q. And you landed there the latter part of March, 1914?

A. Yes, sir, I landed in Fort Smith about the first day of April, 1914.

Q. And then you went to Mine No. 4?

A. I had been to Mine No. 4 and around that vicinity twice before the first day of April. I went down there with Mr. Finley twice.

Q. Was anyone with you besides Mr. Finley?

A. Mr. Camerson went there from Midland about three miles out. He had an office—

Q. Did they have guards on when you first arrived at Prairie Creek in 1914?

A. Which?

Q. Did they have guards on at the mine when you first arrived in 1914?

A. No, sir, they wasn't doing any work at the mine particular. There was only a few men.

Q. Did you select the guards that were placed on duty at the mines?

A. No, sir. I didn't select any of them at all.

Q. Did you know either one of them?

A. Just as I met them there inside of four or five days.

Q. You had never met them before?

A. No, sir. I did not.

Q. You didn't know who they were?

A. I just learned their names when they come there,
703 and they mostly went by numbers.

Q. You numbered them up like—how did you number them?

A. Well, they numbered them—they was numbered when they come there. They had a number.

Q. What was Riley Bailey's number?

A. Mr. Bailey wasn't sent from the agency. There was only two men that had numbers that come from the Kansas City office.

Q. Who were they?

A. One fellow's name was Mr. Van Winkle—he had a number. I forget whether it was thirty or forty.

Q. You don't remember the other man's name?

A. No, sir, I can't recall it right now.

Q. When did they come to Prairie Creek?

A. They came—I think it was—well, there was three men had went with me there the first day that we went there to

stay at his house that was rigged up for us. Mr. Van Winkle was one of the men.

Q. Who were the other two?

A. Well, one of the other two was this man I speak of that came with Mr. Van Winkle from Kansas City—I forget his name.

Q. You say they were from the agency? What do you mean by that?

A. From the agency's office at Kansas City.

Q. From what agency?

A. The Burns Detective Agency.

Q. Is that the same concern that you were sent down by?

A. Yes, sir.

Q. How long did those two men remain with you at Prairie Creek, Arkansas?

A. They remained there until the 6th of April, until
704 the evening of the 6th of April.

Q. They were there on the 6th of April?

A. Yes, sir.

Q. What were they doing?

A. They were doing guard work there. They were working at night guarding the—

Q. They were sent there by the Burns Detective Agency?

A. They advised me that, yes, sir.

Q. Did you go down through Kansas City and carry them with you? A. No, sir, I did not.

Q. How long after you arrived at Arkansas—Fort Smith—before they reached there?

A. I believe I was there three days.

Q. How did you know they were coming?

A. I heard Mr. Bache say, or at least Mr. Finley advised me that he was having a couple or three men more from the Kansas City Agency.

Q. Were they placed under your direct control?

A. Down at the Prairie Creek Mine?

Q. Yes, sir. A. Yes, sir.

Q. You assigned them then, and they were to carry out your orders? A. Yes, sir.

Q. Were you as particular about instructing these two men that came from Kansas City as you were about the other guards referred to on your direct examination?

A. Yes, sir.

Q. Did you call them all together and instruct them?

A. No, sir, I talked to them separately.
705 Q. You carried them off one at a time?

A. I went to them as they were on duty.

Q. You had a rifle, you say. What kind of a rifle did you use at Prairie Creek, Arkansas?

A. Well, I was given and carried—I believe it was a thirty-two short, about that long—(indicating)—I believe about that long.

Q. What make? A. I forget what make it was.

Q. A long range gun?

A. No, sir, it wasn't no long range gun.

Q. Did you have any long range guns there at that time?

A. I don't know of any, sir.

Q. Were you ever in the little office there that you referred to? A. At mine No. 4?

A. They brought it down—it was brought down.

Q. Yes, sir. A. Yes, sir.

Q. Did you examine the guns they had in the office?

A. The guns they had in the office?

Q. Yes, sir.

A. I didn't know of any guns they had in the office.

Q. Where did you get yours?

A. They brought it down—it was brought down.

Q. Who brougth them?

A. They was brought down or shipped down by Mr. Finley or some other person.

Q. When you were off duty what did you do with your gun? A. It was in this house.

Q. What house?

706 Q. Where we stayed there, the guards at Mine No. 4.

Q. Under whose control?

A. Well,—when I got through in the day, in the evening I generally stuck my rifle underneath the bed.

Q. Did each detective that you had there control his own gun and take care of it?

A. No, sir, when you say detective, I don't know anybody that was in the capacity of a detective. They were just plain guards.

Q. Does the Burns Detective Agency carry two men—two kinds of men in its office—in its association—men who act as guards?

A. Yes, sir, they carry many classes of them. Some men they have that can act as guards, that don't know anything about detective work.

Q. Then the two men that came from Kansas City was the ordinary guard that they sent out when called for?

A. As far as I know of. I never heard of them being detectives.

Q. Were you to do anything but guard down there? Were you to do any detective work? A. No, sir.

Q. You was just an ordinary guard when you went down there?

A. When I went there I was to do what Mr. Finley wanted done there. I hadn't taken up any particular duty until these men came—

Q. Yes, sir—go on.

A. Then I had charge of those guards.

* * * * * * * * *

Q. Who did you get acquainted with in that particular vicinity? A. Mr. Looper, Mr. Sylesberry, Mr. Looper's son.

Q. You didn't get acquainted with anybody outside
707 of those who were employed at the mine, did you?

A. Well, no, not outside of the employees of the mine, not more than this man that called, that I thought was Breen, that called himself a deputy sheriff.

Q. That was on the morning of the sixth of April, was it, 1914? A. Yes, sir.

Q. About what time in the morning was it that Bill Bean came to you?

A. Somewheres around nine-thirty, to my best recollection.

Q. Dd you see him any more after he left the mine that morning?

A. I don't remember of seeing him any more. He might be, there, but I don't know.

Q. What direction did he go when he left the mine?

A. He went over towards the school house that I have spoken of.

Q. Was there any gathering at the school house at that time? A. When he went over there?

Q. Yes, sir.

A. I don't recall seeing anybody at that time. About an hour after, probably.

Q Then the parties you have named were the on.ly parties that you are acquainted with?

A. Oh, I was acquainted with Mr. Slankard, and Mr. Baker, his deputy, and I hadn't met this Clint Burrows personally, but he was pointed out to me.

Q. You don't know now whether that was Clint Burrows that was pointed out to you, do you?

A. I know nothing more than that.

708 Q. How far away was he when Looper pointed him out to you?

A. He was about fifty or seventy feet, with two or three other men. Then I had seen the same man on different occasions, after that, and Mr. Bailey said he was acquainted with him, and every time he seen him come around he always called my attention to it.

Q. How many times was he around—

A. And then the cook that was there, I got acquainted with him. He lived somewhere near there. There was a man and his wife that cooked there.

Q. At the mine?

A. Yes, sir. I was acquainted with him. I think it was Smith—I'm not sure.

Q. He was running the boarding house at that time?

A. This coal company was furnishing it.

Q. He was in charge of it?

A. This man, he was doing the cooking, was in charge of the cooking, and I was in charge of the guards in their department where they slept. This man and his wife looked after the beds and rooms.

Q. Mr. Barnes, where did you keep your ammunition?

A. We had very little ammunition. We had, I think we had a half dozen cartridges, or something like that, outside of the few that we was provided with for the rifles.

Q. Did you have any six-shooters? A. What?

Q. Any pistols? A. Who?

Q. You guards, deputies, whatever you wish to call yourselves? A. Yes, sir, I had a pistol in my grip.

709 Q. Did you carry it.

A. I didn't take it out or carry it. No, sir, I did not.

Q. Did any of the guards carry pistols while on duty?

A. There was one old gentleman sent down from Fort Smith by Mr. Bache. When he come there he had an old rusty forty-four, and I took it away from him, and I told him that he couldn't have it. He went and hid it until he was going away.

Q. How long did he remain there?

A. He remained there until—while—well, I believe he left Sunday the fifth, previous to the day of the trouble.

Q. Did you have a guard on duty under you named Jim Prince?

A. No, sir, I can't remember the guards' names. They was only there two or three days.

Q. Did you have a large man, about six feet four inches high, weighed two hundred pounds, that they called Jim, on duty there?

A. I remember that description there. I don't think he was that tall. But I forget his name. He came down from Fort Smith.

Q. You didn't know at that time that he was an ex-convict? A. No, sir, I never [heerd] tell of it.

Q. Did you know Dan Decentis?

A. No, sir, I don't know of a man of that name. I know there was about three men there from Fort Smith. There was the tall man you described, and an old gentleman—I think his name was Smith I believe he had done police duty in Fort Smith, and one middle aged man from Fort Smith.

Q. Had J. R. Bailey, the man you referred to in your examination in chief, and referred to in cross-examination, had he been arrested on the charge of insulting a girl on the road from school and fined?

710

A. No, sir, I never [heerd] tell of it at all. He was with me there—I think he came there the second day. I think he was there with me about four days. He said his home was at Clarksville. He had a wife and family there, or something.

Q. Then what you have related in your examination in chief preceding the sixth day of April is all that occurred at the mine to your knowledge?

A. Well, all that I seen while I was there. I [heerd] a lot of things. I can't tell that.

Q. You examined things pretty thoroughly, didn't you? You didn't sleep in the day time? A. Yes, sir.

Q. You have told all that occurred there as far as your knowledge goes?

A. I have told all I can recollect at this time. Of course it is three years ago—

Q. Can you say, or will you pretend to say, that the men around the mine there, those who were guarding at night, that they remained on duty all night?

A. Well, they went on at six o'clock in the evening, when we went off. There was some night—there was from three to four. Towards the last there were four.

Q. After you went home at night, Mr. Barnes, and went to bed, you didn't get up and go back and see what they were doing? A. No, sir.

Q. You don't know what they did between the time you went home and got down again in the morning?

711

A. I didn't see them. I got their report in the morning.

Q. I want to ask you if it isn't a fact that during the six days you remained there, every time a wagon went out from

the mine, wasn't there two or three Police fellows with guns on it? A. No, sir, that is not true.

Q. It isn't true? A. No, sir.—

Q. I wish I had you for a witness in the contempt case we had down there.

A. No, sir, I would not allow it. I wouldn't allow one of them outside of the fence, even if some one was going to come up with a gun outside of the enclosure.

Q. You wouldnt' have done that, you mean?

A. No, sir.

Q. Nobody came up with any gun, did they?

A. I wouldn't allow anything—

Q. Just answer that question. During the six days you were there, there wasn't anybody came up there with a gun was there? A. I couldn't say there was.

Q. You were on duty during the day and part of the night, weren't you, there? During the six days preceding, and on the sixth day of April, 1914, there wasn't anybody came there with a gun to your knowledge?

A. Outside of the employees of the mine and the guards?

Q. Yes. A. I couldn't say.

Q. Well, no one with any rifle or shot gun?

A. I seen none.

Q. If he had a pistol you couldn't see it? You couldn't say?

712 A. I couldn't say, no, sir. Although I was told that about every other fellow carried a gun. This Mr. Looper's son acted as guard there for the company. He worked a spell of the day and a spell of the night, and he was quite friendly, he claimed, with a good many of the boys, of the miners there.

Q. Is the Burns Detective Agency paying you to come over here from Stillwater, Minnesota, to testify here today?

A. No, sir, they are not. I am not in their employ today, and have not been for seven months or better.

Q. Who is paying you?

A. Gosh, I don't know just yet. There hasn't been anybody paid me anything yet. I expect to get my expenses, my railroad fare and subsistence, and a little expense and a little salary.

Q. At whose instance did you come here?

A. At whose instance?

Q. Yes sir. A. The coal company.

Q. What coal company?

A. The Bache-Denman Company. Mr. C. H. Finley—

Q. You say your salary. How much is your salary?

A. I don't know. I dont' know what I am going to get.
Q. What do you mean by salary?
A. Well, it was you mentioned salary. Mr. Finley arranged with me to come here, and he said he would pay my expenses.
Q. I understood you to say, Mr. Barnes, in answer to my question that you were to get your expenses, incidentals and salary.
A. Well, I'll just put it the way he advised me, that he would pay my expenses and pay me for the time that I lost going and coming, and while here. I don't know what
713 he will pay—
Q. How far is it from the office of Childs and Childs, where you are now testifying, in the City of Chicago, to the City of Stillwater, Minnesota?
A. I couldn't answer that question."

Mr. Drinker: We don't want to burden the court with the omitted parts, but I would like the record to show that the cross-examination of the witness Barnes by Mr. Covington, who was then counsel for the miners, continued for about sixteen pages further, examining him as to his various movements.

The Court: Do you offer it?

Mr. Drinker: I offer it without reading it.

The Court: All right. Let it go in.

(The said omitted portion of the cross-examination of the witness Barnes is in words and figures following, to-wit:)

"Q. What is the railroad fare from Stillwater, Minnesota, to this place?
A. It cost me eleven dollars and twenty-nine cents."
"Q. When did you leave there?
A. The date of the year?
Q. The year—what year?
A. I was about eighteen years of age—seventeen going on eighteen.
Q. Where did you go? A. To Stillwater, Minnesota.
Q. You went to Stillwater, Minnesota? A. Yes, sir.
Q. What did you do after you reached Stillwater, Minnesota?
A. Immediately after that I hired out with a logging firm and went into the pineries.
Q. In what capacity did you work for the firm referred to?

714 A. Let's see—Well, I worked at two different— I worked as an Axe man and teamster.

Q. How long did you—

A. —And had charge of crews.

Q. How long did you work as axe man and teamster?

A. Oh, not very long—not over a couple of years, I don't think.

Q. Then you were in charge of what from that time on?

A. Well, for a few years after that I had charge of men in the lumbering—had charge of crews of men in different places.

Q. Engaged in the lumber business? A. Yes, sir.

Q. Were you the foreman of the men or—

A. Yes, sir, at different times.

Q. In what capacity did you work?

A. Foreman of the men, yes, sir. Probably a hundred or hundred and twenty-five men or so.

Q. How long did you have charge of men engaged in the lumber business after you reached Minnesota?

A. How long was I engaged in charge of men? Oh, somewheres around nine years.

Q. How old were you when you reached there?

A. Reached where?

Q. Stillwater, Minnesota.

A. Seventeen, going on eighteen, I believe.

Q. And you worked at the lumber business for nine years?

A. I worked more than nine years. I was nine years as foreman. Those two years that I was an axe man and teaming. I worked other years in the lumber business besides that.

Q. That would make you eleven years that you were

715 engaged in the—

A. At that particular work.

Q. In that particular work? A. Yes, sir.

Q. Now what did you do after you went out of the management of men in the lumber business?

A. What did I do after that?

Q. Yes, sir.

A. Well, that was the last work I done, was handling men for four or five months in the lumber woods. I went direct from that on to the Stillwater police force.

Q. As a patrolman—did you go on the police force in Stillwater as a patrolman or chief of police?

A. Captain of police.

Q. Night captain or day captain?

A. Night captain.

Q. How long did you work in that capacity?

A. Six years.

Q. Six years? A. Yes, sir.
Q. What did you do then?
A. I was appointed chief of police of the department.
Q. And you held the chief of police job for how long?
A. Eight years.
Q. After you left that job—or did you leave it?
A. Yes, sir—yes, sir.
Q. Voluntarily? A. Voluntarily.
Q. Yes, sir.
A. Partly, yes, sir. It was a political affair in a way.
716 Q. Political?
A. Yes, sir. I had worked under two or three different administrations. I went out of there—it was—I went out all right.
Q. Who succeeded you as chief of police at Stillwater?
A. A captain, a man by the name of McNaughton.
Q. Is he alive now? A. Yes, sir.
Q. Where? A. In Stillwater.
Q. When were you made a citizen of the United States, and where?
A. Well, I can't tell you just when. I know it was several years before I went on the police force in Stillwater. I had my papers taken out there at the court house in Washington County, Minnesota—in the County Seat.
Q. Is Stillwater the County Seat of Washington County?
A. Yes, sir.
Q. Have you a federal court at that place?
A. Not a federal court, no, sir.
Q. What is the name of the court in which you took out your citizenship papers?
A. Well, it is in the District Court, I forget the judicial district that is now.
Q. Who was judge of that court at the time you received your papers?
A. Who was judge I don't know. I just know the clerk. I don't know the judge. A man by the name of Clinton Bennett was the clerk of the court.
Q. Now, after you went out of office as chief of police
717 at Stillwater, Minnesota, what did you——what occupation did you have following that, immediately following that?
A. Immediately following that I went into the special agent's department of the Omaha Railroad—St. Paul.
Q. At St. Paul? A. Yes, sir.
Q. Were you stationed at St. Paul—was that your headquarters? A. Yes, sir.
Q. How long were you in the employ of that railroad?

A. Between sixty and ninety days.
Q. Did you quit? A. Yes, sir.
Q. Voluntarily?
A. Yes, sir. I put in my resignation.
Q. Was it requested by the railroad? A. No, sir.
Q. Was it requested by the man in charge of the special agents of that railroad?
A. I was the man in charge. I was the chief special agent.
Q. You were chief special agent? A. Yes, sir.
Q. And you voluntarily went out of the employment?
A. Yes, sir. I went with William J. Burns because I was offered more wages, nearly double what I was getting.
Q. You went then direct into the William J. Burns Detective Agency? A. Yes, sir.
Q. And up to and including the time—from that date up to and including the time that you were at Prairie
718 Creek in charge of the guards, at what you say was the Bache-Denman Mine, you were an employee of the Burns Detective Agency, were you?
A. When I was sent to this mine?
Q. Yes, sir.
A. Yes, sir, I was sent from the Minneapolis office of the Burns Detective Agency to these people, to the Bache-Denman Coal Company. They advised me where I was going.
Q. What division of the rail-road did you have under your charge when you were made the chief of special agents?
A. No particular division.
Q. The entire system? A. Oh, no, sir.
Q. Well, what territory, particular territory were you supposed to cover, and did you cover?
A. Well, I wasn't much further out of St. Paul than probably fifty miles or something like that. There was plenty of work for me right in the immediate vicinity of St. Paul and Minneapolis.
[—]
A. Any other special agent of the William J. Burns Detective Agency?
Q. Yes, except you.
A. The Detective Agency has no special agents.
Q. Was there any other detective that belongs to the Burns Agency with you guarding this man
A. Yes, sir. There was one other man with me for a while.
Q. Who was he? A. His name was Kelly.
Q. Kelly?

A. Yes, sir. He was only a little while there, prob-
719 ably six weeks with me in that particular work.

Q. Was there any of your crowd arrested while that matter was going on, by the authorities?

A. I never heard tell of any, never knowed of any, never seen anybody arrested, no sir.

Q. You remained with McNaughton five months, I believe you said? A. About that, yes, sir.

Q. Then where did you go? A. Minneapolis.

Q. In what capacity?

A. I went back to work for the agency at whatever work they assigned me to.

Q. What did you do at Minneapolis?

A. At Minneapolis I mostly worked on the American Bankers work—forgery—that was my work in Minneapolis.

Q. On what bank?

A. Any bank that was a member of the American Bankers Association, where there was any work to be done.

Q. Were your operations confined solely to Minneapolis?

A. No, sir.

Q. Where did you go? What other places did you visit?

A. Well, sir, it would take me a long time to tell you what other places I visited besides Minneapolis. I can't remember them.

Q. What particular case or cases did you run down during the time that you were working for the American Bankers Association as special agent of the Burns Detective Agency?

A. What cases had I worked on?

Q. Yes, sir.

720 A. I can't remember the cases. I might remember a few, probably.

Q. Name some one.

A. Well, I believe the first one I worked on when I came from the copper country was the case of A. C. Nelson, who had defrauded a bank at Owatonna, Minnesota, of some two or three thousand dollars.

Q. Can you name any other case?

A. Oh, I can name several, but it hard to recollect. Our cases all went by numbers.

Q. This particular Nelson case, what did you do with Nelson?

A. I went through all the particulars of the case as best I could tracing his movements and his work and so on.

Q. What became of Nelson?

A. I don't know. I never seen him or heard tell of him again.

Q. You never caught him?

A. No, sir, they never caught him that I know of.
Q. How long did you work in that capacity?
A. Which capacity?
Q. With the American Bankers Association as a member of the Burns Detective Agency?
A. That was a portion of my work.
Q. What else did you do?
A. Well I done a good deal of guard work for them, handling guards around Minneapolis at different times. There would be trouble where they would be called on to furnish men.
Q. Have you ever testified in any case before?
A. Any case?
Q. Any case before this one?
A. Of what nature do you mean?
721 Q. Of any nature, criminal or civil.
A. Oh, yes, sir. When I was connected with the police department, in the municipal court—[drunkness], assault and battery, and so on.
Q. Since you went with the Burns Detective Agency have you testified in any criminal or civil cases for them?
A. Let me see. I believe there was only one that I have any recollection of being called into.
Q. Was it a civil or criminal case? A. Criminal.
Q. Where? A. Minneapolis.
Q. What was the man charged with?
A. He was charged with stealing underwear from the Northwestern Knitting Company in Minneapolis.
Q. What was his name?
A. I forget his name. There was four or five young fellows in it that had been working in this plant and had carried stuff out with them.
Q. When was he tried? In what year?
A. I attended this case as a witness, which I believe was settled by their fathers or something—that's about,—
Q. Then you didn't testify in it?
A. Yes, sir, I give evidence.
Q. Before what court? What were you doing testifying when the case was settled without trial.
A. It wasn't settled—after that I believe the case was settled. I heard after that the case was settled—yes. That is about a year and a half ago, as near as I can remem-
722 ber.
Q. Oh, that is since you returned to Minnesota from Prairie Creek? A. Oh, yes, yes, sir.
Q. Are you with the Burns Detective Agency now?
A. Not at present, no, sir.

Q. When did you go out of their employ, out of the employ of the agency?

A. Well, I haven't really left their employment for good, but I haven't been employed by them for the past seven months. But I expect to return to them.

Q. When?

A. Well, sir, I just left their employ about seven months ago, and I went out for them then to make an investigation.

Q. What have you been doing for the past seven months?

A. For the past seven months I have been working as assistant deputy warden at the Bismarck pentitentiary. I went there to make an investigation for the agency, and I worked for them since then.

Q. What penitentiary is that?

A. The North Dakota State Penitentiary.

Q. North Dakota? A. Yes, sir.

"Q. You went to North Dakota seven months ago and were employed as a warden at that penitentiary?

A. No, sir.

Q. Is that the truth?

A. No, sir, absolutely no.

Q. In what capacity did you work at the penitentiary?

A. I worked there about thirty days as an investigator.

Q. Investigator of what?

723 A. Of the escape of criminals, convicts, from the penitentiary to find out if they had help from the outside. About twenty or thirty of them left.

Q. Did you go there on your own initiative, or were you sent?

A. I was sent by the Burns Detective Agency, and when I got through the Warden of the penitentiary got me to stay with him a few months until just recently.

Q. How long did you act in the capacity of agent of the Burns Detective Agency in this place?

A. About thirty days.

Q. About thirty days? A. Yes, sir.

Q. Then what did you do after that?

A. For two months after that I was employed as chief keeper.

Q. Chief keeper? A. Yes, sir.

Q. What were your duties?

A. My duties was to look after every cell house and the inside yard where the buildings were constructed, where the men was at work, and look around the walls—

Q. How much were you paid for that service every month?

A. Well, my wages came to about a hundred and fifteen dollars a month, with board and room and lodging and washing and mending and repairing.

Q. What salary did you receive?

A. About a hundred and fifteen a month.

Q. Was that in straight salary, or did that include your board?

A. No, that was straight salary-board and room and everything else clear.

724 Q. How long did you draw a hundred and fifteen a month from the State of North Dakota for your services at that penitentiary? A. About five months.

Q. Five months? A. Yes, sir.

Q. Were you a citizen of North Dakota?

A. No, sir, you got to be there a year I understand before you can be a citizen.

Q. How long had you been there when they employed you in the capacity that you have stated?

A. Well, I was there thirty days. They employed me almost two months as chief keeper. I was appointed after that as assistant deputy warden for the time I was going to stay there. The warden appointed me to give this five months' salary, because he was well satisfied with my work.

Q. Yes, sir. By whom were you appointed deputy warden? A. By the warden of the penitentiary.

Q. While you were there in that capacity did you draw any money from any other source?

A. No, sir, I did not.

Q. Did you go out of the employ of the Burns Detective Agency during the period?

A. Well, after I was through with this investigation they permitted me to do that, because this warden wanted to keep me there, and had made arrangements with them. They were willing I should do that of my own accord.

Q. Did you make a report of your findings at that institution to anyone, and if so, to whom?

A. I did for the thirty days I was investigating there, yes, sir.

725 Q. To whom did you report?

A. To the William J. Burns Office.

Q. Where? A. At St. Paul.

Q. Who was in charge of it at that time?

A. H. K. Jones.

Q. Where is he now?

A. I believe he is in charge of the same office now at that point.

Q. Have you a copy of that report?

A. I don't keep any copies of any reports, no, sir.
Q. How often did you report during the thirty days?
A. Once a day.
Q. What was your particular mission there?
A. Where?
Q. Will you state your particular mission there so I can understand it?
A. I will. All right, sir. I was sent there by the William J. Burns Detective Agency from the St. Paul office as an investigator for thirty days.
Q. Yes, to investigate what?
A. To investigate the many escapes that had been participated in at the penitentiary about five weeks previous to that, to find out whether the inmates had help from on the outside, or whether it was guards and officials on the inside, on account of so many men getting away, The Board of Control employed the agency to send an investigator for that purpose.

726 Q. Outside of the Calumet, Michigan, and Prairie Creek, Arkansas, affairs, have you ever acted in the capacity of guard, and had in charge guards at any of these places where they have labor troubles?
A. The A. R. U. Strike—I worked as deputy United States Marshal.
Q. At what point?
A. At several points between St. Paul and Fargo and East Grand Forks—different points along the line.
Q. By whom were you appointed?
A. Appointed by J. Adam Bede, United States Marshal.
Q. From whom did you draw your pay?
A. From the United States Marshal's office.
Q. Who paid you? A. I forget who paid me.
Q. Didn't the railroad pay you?
A. I received my pay at the U. S. Marshal's office.
Q. You received your pay at the U. S. Marshal's office but isn't it a fact that the railroad company paid you for your services?
A. By gosh, I can't tell you where the money came from.
Q. You don't know?
A. I know I got it at the U. S. Marshal's office.
Q. You made no inquiry as to where they got it?
A. No, sir, it wasn't necessary.
Q. Did you make application to the Marshal for a job?
A. No, sir, I did not.
Q. Who made application for you?

A. Nobody that I know of. There was a man picked
727 me up at Stillwater.

Q. Who was that man? A. Mat Shortall.

Q. Who was he?

A. He used to be a former chief of police at Stillwater many years ago. He is dead now, some ten or twelve years.

Q. What was he doing at that time?

A. He was a deputy U. S. Marshal under J. Adam Bede.

Q. How long did you work in that capacity?

A. Well, I think it was somewheres around—some time in July, around there, until the latter part of November—pretty nearly all that summer of 1894, I just forget the number of days.

Q. Is that the only strike outside of the two heretofore mentioned? The only labor trouble in which you have participated as officer and strike breaker?

A. I never was employed as strike breaker. I was protecting property and guarding it from being destroyed, but I never worked as a strike breaker.

Q. I didn't mean to say that you worked, but wasn't that your occupation? A. No, sir, I wouldn't do it.

Q. When you went out as special agent of the Burns Detective Agency you weren't engaged in that business?

A. As strike breaker?

Q. Yes, sir.

A. No, sir, I never was. I never knew them to do it.

Q. You say you wouldn't work at it, didn't you?

A. Yes, sir.

728 Q. But you never helped the other side in all your natural life? A. I had enough to do—

Q. You never took the side of the laboring man from the time you went into the business as a chief of police?

A. Yes, sir. I was good to the laboring man during the time I was chief of police in Stillwater. I have a copy of the record showing I got them many jobs.

Q. Would you furnish us a copy of the record showing your record as a friend of the laboring man?

A. I have got records to show anyone that wants to see them in regard to my character, and what the citizens of the City of Stillwater and the surrounding country knowed of my doing, and what they thought of me and my work.

Q. You may have that, but that is not what I am asking about?

A. Oh, I haven't any records showing—it was never necessary—if I got a man a job or saved him paying a fine when he had a family it was never necessary to get a receipt from him.

Q. Have you ever worked for any particular organized body of men, organized laborers?

A. Worked for them?

Q. Yes, sir.

A. No, sir, not that I know of. In what capacity do you mean?

Q. In any capacity.

A. For an organized body of laborers?

Q. Yes, sir. Q. I mean just what I say.

A. Worked for them in any capacity?

729 Q. Yes, sir.

A. I have worked with them. I have always worked for the man that employed them and worked with them.

Q. Have you ever been employed by any one connected with any labor organization to perform any work for that particular organization?

A. No, sir. Now I got you, no.

Q. All of your work has been on the other side of the question, hasn't it? A. All of my work.

Q. Yes, sir, as detective?

A. Public safety work, in all my experience, protecting property.

Q. Protecting property?

A. With the exception of work I did for the Burns Detective Agency. There was a great deal of that work of the same nature. Outside of doing this work for the American Bankers Association, forgery, and so on.

(Being asked what the railroad fare from Stillwater, Minnesota, was, he testified as follows:)

A. It cost me eleven dollars and twenty-nine cents.

Q. Is it three cents per mile or two cents?

A. I don't know what it is. That is what I paid yesterday afternoon in the Union Depot at Stillwater.

Q. Are you preparing to leave Stillwater to go West?

A. No, sir, I hadn't thought of it.

Q. Do you know why, then, they were in such a hurry to take your deposition that they brought you over here to Chicago?

730 A. I don't know whether they got me in a hurry or not. They have been communicating with me, and I told them I was taking a vacation, and was just getting over the grippe, and when I got through I intended to go to work.

Q. How long have you been back in Stillwater from North Dakota?

A. Since the second or third of this month.

Q. Then you were in communication with Mr. C. H. Finley in reference to this matter from North Dakota, were you?
A. Not from North Dakota, no, sir.
Q. After you returned to your home?
A. I had a leter from Mr. Bache when I was in North Dakota, I think it was a month previous to my going home.
Q. You received a letter from Franklin Bache?
A. Yes, sir.
Q. Is that the Bache that is the head of the Bache-Denman Coal Company?
A. It was just a few lines in regard to taking my testimony any time I might be in St. Paul. I never answered that letter.
Q. Did you quit the penitentiary in North Dakota voluntarily?
A. Yes, sir. My time was up—as long as I was going to stay there.
Q. Did you put any of the officers out there in the penitentiary for permitting the escapes, or anything else?
A. Did I what, sir?
Q. Did you get sufficient evidence against them to put them in the penitentiary? A. No, sir.
Q. You got no information at all in referenec to it,
731 then, to amount to anything, did you?
A. I could give you a lot of information, but it wouldn't put anybody in the penitentiary.
Q. Did you ever catch anybody at all that had been charged with crime since you have been in the detective business?
A. Oh, occasionally, yes, sir.
Q. Name one or two of them?
A. One or two. Well, John Connelly is one.
Q. Who is John Connelly, and where does he live?
A. Well, sir, I don't know where he lives now. At that time he was a resident of New York City, of what they call the Bowery Gang. That is, he represented himself—
Q. Did you go to New York City to catch him?
A. Oh, no.
Q. Where did you catch him?
A. In Stillwater.
Q. Stillwater? When?
A. The ninth of February, or tenth of February, in 1909, I think it was.
Q. What did you do with him?
A. What did I do with him?
Q. Yes.
A. I turned him over to the sheriff shortly after I arrested him.

Q. That was while you were chief of police, wasn't it?
A. Yes, sir.
Q. You have never caught anybody at all since you went with the Burns Detective Agency, have you?
732 A. Not very many.
Q. Have you caught anybody that has been charged with crime at all?
A. Well, I don't know whether I have or not. My work is mostly been investigations, and if there was anybody to be caught in regard to that I wouldn't catch them.
Q. Well, has anybody been caught as a result of your investigations? A. Yes, sir.
Q. Who and where?
A. Well, I can't just remember now the names of persons.
Q. Could you give us some idea where one of them was located?
A. Well, there was one man caught in Long Branch, New Jersey, that got away from them. That was the second man. You asked me for one or two. There was another, Isadore Ginseler. I located him in San Francisco, and I located him again in Long Branch, New Jersey, and he got away from the police there.
Q. He was a right slippery fellow, wasnt' he, to get away from the San Francisco police and the New Jersey police, too. Where did he commit his crime?
A. Elgin, North Dakota.
Q. Were you sent to Elgin, North Dakota, to look after this particular criminal?
A. No, sir, he wasn't there then. He was supposed to be somewhere in the West.
Q. What was that man's name, that Bowery man?
A. John Connelly. That was one of his names.
Q. Was that the name under which he was going at the time that you got after him?
733 A. Yes, sir.
Q. Where did you first strike his trail?
A. Stillwater.
Q. Where did you catch him?
A. On a street car leaving the city.
Q. What did you do with him?
A. He was locked up shortly after he was taken off the street car, in the city jail.
Q. How long did he remain in jail?
A. About two days.
Q. Where did he go from there?
A. He had a hearing in the Municipal Court, and was bound over to the grand jury and put in the county jail.

Q. What became of him then?
A. He served a term in the Minnesota state prison.
Q. For this particular offense?
A. For attempted forgery, yes, sir.
Q. That was the offense he was charged with when you arrested him? A. Yes, sir.
Q. That was while you were chief of police, wasn't it?
A. Yes, sir.
Q. Then you haven't arrested anybody since you have been with the Burns Detective Agency, have you?
A. No, sir, I haven't picked up anybody personally or made arrests on the street myself.
Q. Have you had anybody else make any arrests?
734 A. I have not. The management of the office probably through my investigation and reports might have. There might be ten or fifty. They don't tell me. It is none of my business, and I daren't ask them.
Q. When you went to the penitentiary in North Dakota to make an investigation you referred to, did they turn you in among the convicts? Were you permitted to go in among them? A. Yes, sir.
Q. Were you dressed in citizen's clothes? A. Yes, sir.
Q. Were you ever at any time dressed in any other kind of clothes when you went among them? A. No, sir.
Q. Were you with them in the day time or the night?
A. Both.
Q. Did you pose as a convict? A. No, sir.
Q. You did not? A. No, sir.
Q. Did you give them to understand that you were imprisoned? A. Who?
Q. You. Did you give the convicts to understand that you were in prison there the same as they were?
A. I couldn't do that.
Q. Why?
A. Because a man that ain't sentenced and convicted to the penitentiary cannot go in there and pose to the convicts as a prisoner.
735 Q. Did you tell those convicts that you were there for safekeeping and awaiting your trial?
A. I told them nothing of the kind, no, sir.
Q. Did you tell them who you were?
A. They knew that.
Q. How did they find out?
A. The warden and the deputy warden advised them. They knew who I was.
Q. They knew what you were there for?
A. No, sir.

Q. Did they know you were a detective?
A. Well, it was learned after that they had heard I was.
Q. Then the warden and the deputy warden didn't tell them that, did they? What name did you go under there?
A. I have only one name, the name I am under here.
Q. Were you introduced to the convicts as Mr. Barnes?
A. No, sir, I was not.
Q. What name were you introduced under?
A. I wasn't introduced under any name.
Q. Weren't you? A. It ain't necessary to do that.
Q. How were you paid for your services in North Dakota at that penitentiary, by check or in cash?
A. Sometimes by check and sometimes by cash.
Q. Who drew the checks in payment of your services?
A. Who drew them?
Q. Yes, sir.
736 A. I was handed my check when I got—I got a check from the office?
Q. What office? A. The office of the penitentiary.
Q. The clerk of the penitentiary gave you your check?
A. The warden's secretary.
Q. What was his name? A. W. H. Ferry.
Q. Mr. Barnes, if your railroad fare and expenses and compensation for the time you may lose is tendered you, will you come to Fort Smith, Sebastion County, Arkansas, in the United States District Court for the Western District of that state, and testify when this case comes up for trial?
A. I don't know whether I will or not.
Q. Why not?
A. Because I couldn't answer that question. I don't know whether that trial—when that trial will be, nor I don't know where I will be, and I don't know whether I will be living or dead.
Q. Well, assuming that you will not be dead, and that you will not be busy running down criminals over the country, would you come then and testify if these expenses were tendered you in cash?
A. My expenses—if my expenses and time was paid?
Q. Yes, sir.
A. And as much as I can earn anywhere else, I might, and I might not go unless I was subpoenaed at that, because I might be engaged so that if I did that I would lose my position, and I couldn't afford to go.
737 Q. You understand that you could not be forced under the law to go to Orkansas to testify, you understand that don't you?
A. I don't know, I couldn't say so.

Q. You don't know that? A. No.

Q. You have been in the detective business as long as you have, and don't know that they can not force you to go from Minnesota to Arkansas to testify in any court?

A. I guess they could, the United States.

Q. You knew they couldn't force you to come over here. They didn't subpoena you to come here, did they?

A. If I had been engaged in steady work now I wouldn't have come unless I had to come.

Q. You aren't doing anything now?

A. Right now?

Q. Yes, sir.

A. You know what I am doing right now.

Q. You know what I mean. You're not dull at all.

A. I have to keep working.

Q. What were you working at when you were invited to come here to testify? A. I was home.

Q. What were you doing? A. I was home sick.

Q. How long have you been sick?

A. I told you I come home the second or third of April—

Q. Have you been sick ever since you came home?

A. Yes, sir.

738 Q. Have you anything in view?

A. Oh, yes. As I said, I can go back with the Burns Agency any time I want to.

Q. I am sure of that.

[Q.] The time I have been home sick I have had five telephone calls from the Twin Cities to handle guards to look after bridges and property.

Q. At the time they asked you to come here you were not engaged in any business, were you?

A. When I come here?

Q. Yes, sir.

A. I was home sick. If I hadn't been I would have been working.

Q. At what?

A. I can't say just now. I can go right back with the Burns Agency when I go home. Or I could have went to the Sheriff's office in St. Paul or Minneapolis, Hennepin or Ramsey, and went to work handling guards.

Q. Handling guards for whom, for what corporation?

A. For the Sheriff's office, or possibly from the Burns Agency. They are calling for men all the time, and can't get them, men that understand handling guards and protecting property. If I was well and there now I could get probably eight dollars a day.

Q. Well, when this case comes up for trial, and you are not engaged handling guards or pursuing criminals, would you then come to Arkansas and testify upon receiving what you would consider a just compensation for the time that you might lose, your expenses, incidentals, and so forth?

739 A. Well, I can't answer that question now. If it would be possible at the time that that trial might come off, that I wouldn't be engaged and would be out of work, which I don't expect to be, and don't figure on it, but providing it would be that way, and I needed to earn something for my time going and coming, and my expense, which would mean something for me, why, I would go certainly. Now, then, if I am engaged working by the month at a good salary, or by the day, which might mean several years' work for me, if I jump up and leave there for a week it would lose me my job, I wouldn't go.

Q. If a subpoena was issued from the court and sent to wherever you were, would you then go?

The Witness: Might I ask a question?

Q. You understood my question a minute ago, Mr. Barnes?

A. I thoroughly understood it. Would you permit me to ask you a question?

Q. I am not testifying. I don't want it in the record.

A. You asked me if I wasn't engaged and I was subpoenaed by the proper court, the United States Court, to go to Fort Smith to testify, and money tendered me, what I would do. Now, you say that if I was subpoenaed—you know as well as I do if I was subpoenaed and compelled to go to Fort Smith there would be no money tendered me only just my—you know as well as I do that the United States Mar-

740 shal's office that would serve the subpoena wouldn't give you any money. You'd have to furnish your own money to go. How could I answer that question? You know that money would be tendered me. I couldn't ask for it. I must go.

Q. That's true in a criminal case, they wouldn't have to furnish you the money. This being a civil case you can demand your pay even if you live in the State. You said at the outset that you might have to be subpoenaed. Do you mean to say that you would have to be subpoenaed by a court that could compel your attendance in the event you refused?

A. If anybody wanted me to testify and I was subpoenaed by a United States Marshal I would have to go.

Q. Anywhere in the United States—is that the way you understand it?

A. If the United States Marshal subpoenaed me to the place named I would have to go."

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741 PETE HANRATY, called as a witness in behalf of the plaintiffs, having been duly sworn, testified as follows:

Direct Examination

By Mr. Drinker:

Q. What is your name? A. Pete Hanraty.
Q. Your name is Pete Hanraty? A. Yes, sir.
Q. How old are you? A. I will be—
Q. When were you born? A. 1864.
Q. How long have you been connected with mining?
A. Since I was 9 years of age.
Q. Where did you first begin? A. In Scotland.
Q. Just briefly describe your experience in connection with mining.

The Court: Do I understand you are offering him as an expert?

Mr. Drinker: Yes, sir.

The Court: Very well.

Q. When did you come to this country?
A. When I was about 14 years old.
Q. And did you engage in mining then? A. Yes, sir.
Q. Where?
742 A. I went to work in the mines in Hazleton, Pennsylvania.
Q. How long did you stay there?
A. About a year, I think.
Q. Where did you go then?
A. I went from there to Illinois.
Q. What part of Illinois? A. A place called Minonk.
Q. Who was with you? A. My brother.
Q. Older than you? A. Yes, sir.
Q. Where did you go from Illinos?
A. I went to Kansas.
Q. How long did you stay in Kansas?
A. I stayed there about a year.
Q. And you were working in mines all the time?
A. All the time, yes, sir.

The Court: What character of testimony do you expect to elicit from this witness?

Mr. Drinker: He has examined these mines, and will explain their capacity and output.

The Court: Why follow him around from one place to another? Show his experience.

Q. When did you first come to the Indian Territory?
A. In 1882.
Q. How long did you work in the mines there?
A. I worked in the mines there until 1900, when I
743 was elected president of the Miners' Union.
Q. What organization of the Miners' Union?
A. District No. 21.
Q. When did you first become associated with the United Mine Workers? A. In 1898, or the beginning of 1899.
Q. How was District 21 formed?
A. It was formed by all local unions.

Mr. Warrum: We object to that, if the court please. The answer to that question would not qualify the witness along the lines announced by counsel for plaintiffs.

The Court: I understand it was formed by a charter from the United Mine Workers.

Q. Out of what organization was it formed?
A. Well, the Knights of Labor turned over to the Mine Workers in 1898 or 1899.
Q. Did District 21, as originally formed, cover Oklahoma and Indian Territory?
A. Oklahoma, Indian Territory, Arkansas, Colorado, New Mexico and Texas.
Q. Originally? A. Originally.
Q. Were you connected with the Knights of Labor when it was turned over?
A. Yes, sir, I was Vice Master Workman of the Knights of Labor when they were turned over.
Q. And you say you became President of District 21 in 1900? A. Yes, sir.
744 Q. How long did you occupy that office?
A. About 7 or 8 years, 7 years and some months.
Q. Then what did you do?
A. I was elected delegate to the constitutional convention of Oklahoma.
Q. And you served for 5 months in that convention?
A. Six months.
Q. In what connection? On what committees did you serve with relation to mines, during that service?

A. I served as chairman of the Committee on Mines and Mining, and vice president of the Constitutional Convention.

Q. That was the convention to draft the Constitution of Oklahoma? A. Yes, sir.

Q. After those five months, what position did you occupy in connection with organized labor?

A. Well, I was elected Chief Mine Inspector for Oklahoma.

Q. No, in connection with organized labor?

A. I was appointed a delegate by President Gompers of the American Federation of Labor, and served for about 6 or 8 months.

Q. Then you say you were elected chief mine inspector for Oklahoma? A. Yes, sir.

Q. In 1907? A. In 1907.

Q. How long did you occupy that position?

A. I occupied that position for about 3 years and 3 or 4 months.

Q. Then what did you do?

745 A. Then I resigned and became mayor of McAlester.

Q. How long were you mayor of McAlester?

A. About 2 years, I believe.

Q. How did you get out of that office?

A. I was recalled for enforcing the laws in that city.

Q. When you were recalled as mayor of McAlester what did you then do?

A. Mr. John P. White, President of the Miners' Union, wired me to meet him in St. Louis. I believe that was in the month of June, 1912 if I remember right. I went to St. Louis, and he asked me to go to Colorado as an organizer for the International organization.

Q. Did you do that? A. Yes, sir.

Q. How long were you there?

A. I was there about 2 years, I think.

Q. During that time did you attend any conventions of District 21?

A. Yes, sir, I attended two conventions, I believe.

Q. In Ft. Smith? A. In Ft. Smith, yes.

Q. In February and May, 1914? A. Yes, sir.

Q. As a delegate of your local union?

A. A delegate from 1026, Coalgate, Oklahoma.

Q. After you came back from Colorado, what did you do?

A. From Colorado? I went to digging coal at Savannah, Oklahoma.

746 Q. You worked in the mines how long?

A. Until they were closed down.

Q. Then what did you do?

A. Then I was again elected President of the Miners' Union.

Q. District 21? A. District 21.

Q. How long did you serve then?

A. I was in office—I went into office on the first day of April, 1915, and served, I think, they put me out of office in about 4 or 5 months. I served during that time.

Q. Then what have you done since that time, connected with mining? Be very brief.

A. I have leased mines. I leased the State mine on the penitentiary grounds and put convicts in there during the miners' strike, and lost that. I leased the Port Havana mine over here, and they sold out to that company and I got rid of that. I leased a mine from the Interstate Coal Company at Heavener, and I left that, and when my sons came back from the army we opened a mine of our own over here at Panama.

Q. How long have you been operating that mine?

A. About two years.

Q. You are still operating it?

A. We are still operating it.

Q. Mr. Hanraty, you were President of District 21, were you not, when that district was signed up with the operators for the closed shop? A. Yes, sir.

Q. When was that?

747 A. In 1903.

Q. Will you explain to the court and jury what is meant by the closed shop, the non-union shop and the open shop?

A. The closed shop is a shop where no persons are allowed to work only those who are members of the United Mine Workers. A non-union mine is a mine where the operators will not allow any union man to work. The open shop is a mine where they work union and non-union labor, without contract or agreement.

Q. Were you instrumental in bringing about the closed shop in District 21.

A. Yes, sir, I was one of the leading actors.

A. Was Mr. Bache was a non-union operator at that time.

Q. He was a non-union operator before 1903?

A. Yes, sir.

Q. For how long, do you know? A. Oh, 2 or 3 years.

Q. Now, Mr. Hanraty, after the union mines were organized and the closed shop brought into effect in District No. 21, that is, after 1903, while you were President of District No. 21, did you have occasion to consider what, if any, effect the

surrounding non-union mines had on the relations of your union with the union operators?

A. Yes, sir, I gave it considerable study.

Q. In what connection?

A. Well, the non-union coal from Colorado and New Mexico, Alabama and Tennessee was beginning to take our markets and throw our mines out.

748 Mr. Warrum: If the court please, the defendants separately object to this question and the evidence sought thereby, for the reason that it calls for a conclusion on the part of the witness, and under the ruling of the Supreme Court, they found as a fact that the production of the mines of these plaintiff companies was a negligible production compared with the production of the union mines, as charged under the theory of the complaint. The evidence is incompetent and does not tend to support any issue or the contention of the plaintiffs on any issue in this case.

The Court: It may have some bearing upon them. I will let it in.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Drinker: I will ask that the question be read again to the witness. I don't think he answered it exactly.

(The question was thereupon read to the witness by the reporter.)

A. I answered that non-union coal from Colorado, New Mexico, Alabama and Tennessee was making inroads and taking the markets of thee coal produced by the union miners in the Southwest.

749 Q. And how did that affect the relations, if at all, of the Union with the union operators?

A. Why, they just simply took our markets because they produced cheaper coal than we did.

Q. When you say "our markets" to whom do you refer?

A. To the markets to which we shipped coal, Oklahoma City, Dallas, Texas,—

Q. Who do you mean by "we"?

A. The Union operators.

Q. The operators with whom you had relations?

A. Yes, sir.

Q. And what if any, action did you take in connection with that?

A. Well, I made a number of investigations about the non-union coal being produced and sold in what we termed our markets, and I complained to President Mitchell about it and insisted that they be organized in Colorado and Alabama.

Q. For what purpose?

A. For the purpose of raising the price and creating conditions so they could not produce cheap coal and take our markets from us.

Q. Now, state whether or not any union operators brought this to your attention and complained to you about these conditions?

A. They were constantly complaining they were losing their markets by non-union cheap coal.

Q. Throughout all of the period that you have stated?

A. Yes, sir, throughout all that period.

750 Q. Now, Mr. Hanraty, will you explain briefly to the court and jury the reason, the chief reason, I don't want you to go into everything, but the chief reason why the coal is produced cheaper under the open shop, or non-union method than by the union method?

A. Well, it is produced cheaper for this reason, that non-union miners are not as exact as union-miners are. In other words, the price per ton covers a great many things, such as draw slate, they don't pay for: they don't pay water yardage; the miners push their cars both ways, and work on idle days.

Q. That is, non-union miner.

A. Yes, sir. The non-union miners work on idle days, and make coal, and all that has a tendency to produce cheap coal.

Q. Is there any condition in respect to the number of men working in a room that bears on this?

A. There are always two men work in a room.

Mr. Warrum: The defendants separately renew their objection to this kind of testimony.

The Court: Objection overruled.

To which action and ruling of the court the defendant at the time duly excepted and still except.

A. Two men work in a room, sometimes three men work in a room.

Q. The jury don't understand mining as well as you do, and will you explain in what way two men working in a room make it cheaper than one?

A. By working two men in a room, if an operator has one hundred places, and he had a union place, he would have a hundred miners, and if he worked non-union, he would have

two hunded miners, and with two hundred miners would produce a greater production for a day's work than one
751 hundred.

Q. And how does the amount of production affect the cost of operation?

A. The greater the amount of coal they produce the less cost.

Q. Why is that?

A. Because it is all figured on a cost basis. There is so much company men and so much overhead.

Q. What do you mean by overhead?

A. That is the dead expense that must be paid for the mine to operate.

Q. No matter whether coal is produced or not?

A. No matter whether coal is produced or not. On a large tonnage you have so much overhead per day, and if one-half of the men lay off your overhead goes on and the cost per ton increases with it.

Q. Per ton?

A. Yes, sir, increases that day.

Q. Now, you have spoken about the non-union men working on idle days, what do you mean by that?

A. The digger goes in the mine and shoots the coal and makes it ready, as they term it, so the next day they can load lots of coal.

Q. Does that increase production?

A. Yes, sir, and decreases cost again.

Q. Are the union men permitted to work on idle days?

A. No, sir, not to dig coal.

Q. None of them can work unless they all work?

A. None of them can work unless they all work.

752 Q. Now, is there any matter connected with the supervision of the mine that affects the cost of production, that is different in union and non-union mines?

A. Yes, sir, in Colorado there are systems in the non-union mines, when I was out there, that a company,—

Mr. Grant: We object to that. He is applying that to Colorado, and that is not this property down here. And furthermore we object on the ground that it is immaterial.

Mr. Drinker: Never mind Colorado, but speak of the open shop mines in general.

Mr. Grant: We renew our objection.

The Court: You may answer it. Let's get along.

Mr. Drinker: This is very important.

The Court: He may answer.

To which action and ruling of the court the defendant at the time duly excepted and still excepts.

A. In McCurtain,

Q. Never mind any place, but open shops as distinguished from union mines, how do they differ?

A. The non-union company leases the mine out to practical miners who operate it.

Q. One miner?

A. One, or two or three, maybe five or six miners.

Q. And does each miner have charge,—

A. One or two entries.

Q. What is an entry?

A. A place where rooms are turned off.

753 Q. The company makes a contract with the miner that has charge of that entry? A. Yes, sir.

Q. How does that affect the cost of production?

A. Because of the constant supervision of the contractor, as we term it, over the miners, he gets coal cheaper than any other system known.

Q. How is that?

A. Because of the constant supervision he has over the miners.

Q. You would have say ten superintendents instead of one? A. You would have three or four.

Q. According to the number of miners? A. Yes, sir.

Q. There are two more items I want to take up specifically. Is there any condition connected with the occurrence of strikes in an open shop mine or non-union mine that increases the cost, one as distinguished from the other?

A. I do not quite understand your question.

Mr. Warrum: That covers too broad a field and calls for an obvious opinion and conclusion on the part of the witness.

The Court: It may be obvious, but this witness has probably qualified himself. Proceed.

To which action and ruling of the court the defendant at the time duly excepted and still except.

Q. State any conditions connected with strikes—

The Court: If there are any?

Q. (Continuing) If there are any, where the cost of
754 operation in union mines is greater or less than in the non-union mines, by reason of the occurrence of strikes in the one and not in the other, if there is any. Do you understand the question? A. I do not.

Q. Do strikes occur in non-union mines? A. Not often.
Q. Do they in the union mines? A. Very often.
Q. Are strikes expensive? A. Very expensive.
Q. Expensive to the operator?
A. Yes, sir, expensive to the operator.
Q. Now, will you state,—

The Court: I suppose they are also expensive to the miners, are they not?

A. Yes, sir, expensive to the miners too.

By Mr. Drinker:

Q. Can there be a strike in an open shop mine except to unionize it?

A. I never knew a strike in an open shop mine unless there were union men connected with it.

Q. Unless there was a contract? A. Yes, sir.

Q. Or unless they are trying to get them to make a contract? A. Yes, sir.

Q. Now, the final item I want to call your attention to is as to the conditions, so called, in the agreement between,— the agreement between the operators and the miners
755 the clause that the conditions as in effect at the date of the contract will govern? A. Yes, sir.

Q. Will you explain what, if any effect, on the cost of mining there is by reason of those conditions and explain what is meant by conditions, and how they grew up briefly?

A. Conditions in a union mine originated with the radical miner, as a rule, and a weak pit-boss or superintendent will give in to it, and it finally becomes part of the contract, and incerases the cost to that particular mine, and is finally written into the contract.

Q. If there is a strong pit-boss and he makes a condition in favor of the company, does that become a part of the contract, as a matter of practice?

A. There is sometimes a strike on him.

Q. Do you know of any conditions in favor of the company that ever became a part of the contract?

A. I don't know of any.

Q. Do you know of any questions where the conditions in favor of the miners and against the company where the weak pit-boss gave in, became permanently fixed on the operators?

A. Many of them.

Q. When such condition is established, can the operators get rid of it?

A. No, sir, I am trying to get rid of two now, and I can't do it.

Q. The conditions for the miners attach, and stay there, and conditions for the operators never do?

756 A. Yes, sir.

Q. And the longer the operator operates the mine,—

A. The more conditions he gets.

Q. Just a final question on this line. Can you give any example of such a condition?

The Court: Did it have anything to do with these mines?

Mr. Drinker: Yes, sir.

The Court: If he knows that.

Q. Do you know of any such conditions that attached to Mr. Bache's mines?

A. No, sir, I cannot recall right now Mr. Bache's mines.

Q. Do you know about two men in a room, or one man?

A. There is only one man allowed in a room.

Q. In Mr. Bache's mines? A. Yes, sir.

Q. Do you know about the Central Coal and Coke company, their plant, and don't answer anything that you don't know yourself?

A. The Central Coal & Coke Company, when they signed the contract, there was a motion made in the Pittsburgh contract that the same rules and customs would apply, and if they worked two men previous to 1903 that condition would remain.

Q. So the Central Coal & Coke Company got two men in a room.

A. By reason of that motion beng passed and agreed to.

Q. And Mr. Bache could only work how many men in a room?

A. I think only one.

Q. Mr. Hanraty, do you know Mr. Pete Stewart?

A. Yes, sir.

757 Q. How long have you known him?

A. I got acquainted with him about 1889.

Q. And where? A. At Coalgate, Oklahoma.

Q. And you have known him ever since? A. Yes, sir.

Q. What was your connection with him, briefly, we don't want a history of it, from 1889 to 1914?

A. During the joint conference in Pittsburgh, Kansas, I selected him as one of the men to represent the miners, along with me, on the conference committee, as we called it.

Q. That was when District 21 was unionized?

A. Yes, sir. He afterwards became Board member, and served as a Board member for me, for some time.

Q. How long?

A. Maybe two or three and possibly four years.

Q. And did you come in contact with him after you ceased to be president of District 21, after 1907?

A. Oh, yes, I met him often.

Q. In what capacity did you see him then?

A. He was president of the Miners Union then.

Q. When did he become president of District 21? Did he succeed you?

A. No, a man by the name of Jones succeeded me for about six months, and they put him out, and then I think Stewart succeeded him.

Q. Did you succeed him in 1915?

A. No, they had so many presidents about that time
758 I don't remember. I believe William McLachlan was president a little while.

Q. Did Stewart, to your personal knowledge, make any investigation while you were president, and he was acting on your Board, of the effect of the relationship between District 21 and the union operators to these non-union operators that you have spoken of? A. Oh, yes; yes, sir.

Q. When?

A. Well, as I stated before, we persistently demanded that Colorado be organized.

Q. And Stewart was along with you at that time?

A. Yes, sir.

Q. Did he ever visit these non-union mines that you have described? A. Yes, sir; I think he did.

Q. Now, were you there,—do you know, did he ever go with you?

A. Yes, sir, I know he made one trip in Colorado while I was there.

Q. For the purpose of investigating this?

A. Yes, sir, to investigate it.

Q. Did you send him there?

A. No, sir, he was then president of the Miners Union.

Q. When was that?

A. 1914, he was in Colorado.

Q. He was there in 1914?

A. Yes, sir.

Q. Do you know what time of the year?
759 A. No, I really don't know.
Q. Do you know whether it was in the spring or the fall?
A. He had four organizers out there at that time, working there, trying to organize them.
Q. Was he there at the time the four organizers were there? A. Yes, sir.
Q. That fixes the time that he was there, at the same time that District 21 had four organizers in there?
A. He was there at Walsenburg when Mose Cleavenger and I were there.
Q. Did he tell you what he was doing there?
A. I don't remember, I didn't talk to him.
Q. Did you ever discuss with Mr. Stewart the effect of the non-union mines on the relation of the union miners and union operators, in connection with competition and cost of production?
A. At every Board meeting we had we generally discussed that proposition; I don't remember when we did not discuss it.
Q. That you regarded as a constant menace to you?
A. Yes, sir, a constant menace, the non-union coal from Colorado and Alabama.
Q. You say that after you were recalled as Mayor of McAlester, that Mr. White telegraphed you to come to St. Louis?
A. Yes, sir.
Q. State briefly the conversation with Mr. White, and the purpose for which he asked you to come there?
A. He wired me to come to St. Louis, and I met him in the Maryland Hotel; he was very busy, as I remember, and
760 he said, "Pete, I want you to go to Colorado, we must organize Colorado." He said, "Will you go?" and I said, "I am out of a job, and I will accept your proposition on this condition, that my movements be kept secret for five or six months, to make an investigation, I would like to make an investigation and I will write you a report of my investigation, and how we should organize Colorado".
Q. In what capacity did you go to Colorado?
A. As a National organizer for the national organization.
Q. Announce yourself as such to the world?
A. No, sir, I kept it quiet.
Q. How did you do that?
A. I had been a chief mine inspector, and I was in Colorado, supposed to be writing up a story of why mines explode.
Q. And what were you really doing?

A. Investigating how to organize the miners of Colorado.

Q. Now, did you come in contact with Mr. White when you were President of District 21, from 1900 to 1907?

A. Yes, sir, he was president of District 13, in Iowa.

Q. And did you discuss with him then the effect of competition of non-union coal on District 21?

A. Yes, sir, the presidents of Iowa and Missouri and Kansas and myself discussed it, and we were all affected by the same non-union coal.

Q. And what, if anything, was discussed by you gentlemen as to the effect of Colorado, and as to what action should be taken?

A. We brought all the pressure we could on President Mitchell to have Colorado organized.

761 Q. For what purpose?

A. For the purpose of raising the price in Colorado, so the coal could not come in competition with us.

Q. Now, will you just describe briefly the effect which you have stated, of the Colorado, Alabama and the other non-union coals that you have described, had on District 21, during the period from 1903 to 1914, as distinguished from the period before that, before District 21 was organized?

A. The Colorado coal came as far east as Oklahoma City and Shawnee.

Q. When?

A. In 1906 and 1907, and while I was chief mine inspector I had reasons to investigate it.

Q. How far did Colorado coal come before 1903?

A. Before 1903?

Q. Yes, sir.

A. We met them in competition, because we were cheap then ourselves.

Q. How much did the circle narrow as affecting the Colorado market, and the Arkansas market, as before 1903 and after?

A. We used to ship coal as far west as El Paso and Ft. Worth, and Dallas, San Antonio, Galveston, and all over Texas, and the Arkansas coal competed with the Indian territory coal during those days.

Q. And then after the organization of District 21, what effect did the Colorado coal have on those markets?

762 A. It took practically all of the markets, took Ft. Worth and Dallas, Texas,——Colorado coal came in there, and Alabama coal came in there.

Q. Now, I was just going to go right around from Colorado. Now, coming down to New Mexico and Texas, describe the lignite mines,—New Mexico mines, describe the effect of

those mines on District 21 mines, beginning as to what was the market of each before the organization 1903 and afterwards.

A. They gradually encroached into our markets, until the circle became smaller every year. If you will look up the geological survey, the reports, you will find that this circle of Oklahoma coal and Arkansas coal has become less and less every year, and the non-union coal from Colorado and Alabama has increased every year since 1900.

Q. And Alabama, what if any market did the Alabama coal take away from the Arkansas operators after the unionization of Arkansas?

A. They took practically all of the southern Arkansas, Little Rock was filled up pretty much with Alabama coal, according to an investigation I made there.

Q. What other markets in the South?

A. That is the only place in Arkansas I investigated.

Q. Personally? A. Yes, sir, Little Rock.

Q. Did West Virginia coal affect the Arkansas mines at all, to your knowledge?

A. Oh, yes, West Virginia coal has always affected Arkansas and Oklahoma coals.

Q. Has West Virginia ever been organized?

763 A. It is partially organized now, I understand.

Q. Since the war? A. Yes, sir.

Q. Was it organized before 1914? A. In places.

Q. The great bulk of it was always non-union?

A. Yes, sir, always non-union.

Q. Now state briefly what, if any, markets reached before 1903, by Arkansas operators, were taken away from them by West Virginia Operators?

A. I don't believe I know about that.

764 Q. You don't know personally?

A. No, I do not.

Q. Were you ever as much interested in West Virginia as in Colorado and Alabama?

A. No, sir, because the freight rates from West Virginia cost more, and therefore it did not come in as close competition with us as Alabama and Colorado.

Q. Now, just explain briefly how the freight rates protect a union mine from a non-union mine in this district; those things are very familiar to you, but they are not to the jury.

A. The only protection that it gives the union operator is the freight rates get so great they can not compete with the union coal. In other words, they ship coal east from Trinidad, Colorado, into Oklahoma City and Shawnee, and one car of

coal was laid down in Pittsburgh County, right in the heart of the coal fields of Oklahoma.

Q. But there is a place where the freight rate gets so high it counteracts the difference in the cost of operation, is that the idea?

A. Yes, sir, that is the idea exactly.

Q. If the Colorado mines, non-union mines, instead of being situated in Colorado, were situated in Oklahoma, what would be the effect on the Arkansas mines?

A. There would be no union mines in Arkansas or Oklahoma.

Q. Why not?

A. Because they could not compete with the open shop, or non-union mines.

765 Q. Now, Mr. Hanraty, did the duties of the district president, as carried out in practice, of the Miners' Union, require him to be familiar with these competitive conditions that you have mentioned, affecting the markets of the different operators in his district?

A. If he did not investigate it, he would not do his duty right, I don't think.

Q. Was it his duty to be familiar with them?

A. It was his duty to understand these competitive conditions, where coal was coming in competition with union labor.

Q. When you were president and Mr. Stewart was under you, did he investigate those conditions? A. Yes, sir.

Q. And afterwards, when you were mine inspector, did you know of your own knowledge that he investigated and familiarized himself with those conditions?

A. Yes, sir.

Q. He had practically as good a chance to know those as you did?

A. The same chance, the same opportunity.

Q. Now, Mr. Hanraty, did you know Fred Holt?

A. Well acquainted with him.

Q. Do you know him now? A. Yes, sir.

Q. Where did you first meet him?

A. The first time in 1900.

Q. And in what connection did you know him?

A. He was a miner over here in Red Rock, I believe it was,—Montreal.

766 Q. In what capacity did you know him?

A. As a miner.

Q. Did he participate in any of these discussions that you have spoken of relative to the competitive conditions that you have described, when you were both present?

A. Yes, sir, after he became secretary-treasurer of the Miners' Union of District 21.

Q. Do you know when that was?

A. In about 1908, he became secretary.

Q. And after that was he present at the meetings of the miners, the miners and operators when those conditions were discussed? A. Yes, sir.

Q. And you have talked about them to him yourself, personally? A. Yes, sir.

Q. About these matters? A. Yes, sir.

Q. Now, Mr. Hanraty, do you know James Mullen?

A. Yes, sir.

Q. He died in about 1915?

A. Yes, sir.

Q. In what capacity did you know him?

A. He was International Board Member.

Q. When?

A. Well, during 1913 and 1914, and along in there.

Q. What was he before that, do you know?

A. I can not remember if he was on the Board before that or not.

Q. Was he a delegate to the miners' conventions?

767 A. Yes, sir, he was a very prominent miner.

Q. He was a prominent man in the district organization? A. Yes, sir.

Q. Since when?

A. Since the beginning of the organization.

Q. He was in it from the start? A. Yes, sir.

Q. Was he present at any conferences and meetings and discussions where you were, where these matters of competitive conditions, such as you have described, have been discussed?

A. Yes, sir, right in this city, he attended the meetings.

Q. Many of them or few of them?

A. Quite a few of them; he was a leading miner of the district; one of the leading miners of Arkansas.

Q. Now, Mr. Hanraty, do you know Mr. William Dalrymple? A. Yes, sir.

Q. How long have you known him?

A. I knew him about [1800]—I knew him when I was mayor of Coalgate.

Q. When was that? A. In 1898 and 1899.

Q. That is one office, I think, you did not mention before. You have known him ever since? A. Yes, sir.

Q. Do you know what, if any, office he occupied in the United Mine Workers' organization?

A. He was district board member and International organizer and International board member.

768 Q. Did you have anything to do with having him appointed to any of those offices?

A. Yes, sir, when I was elected president in 1915 I requested—

Q. Before 1914.

A. 1914,—no, I don't know that I did.

Q. Continue your answer to the question.

A. When I was elected president in 1915 the president of each district, as a rule, suggests names to the National President, who appoints the International organizers for that particular district, and I suggested Mr. Dalrymple.

Q. Was he prominent or otherwise in the district organization during the time you knew him?

A. He was very prominent in the miners' union since 1903, I believe.

Q. Was he present at any of these meetings and discussions that you have mentioned where the competitive conditions between non-union and union coal were discussed?

A. Yes, sir.

Q. Many of them or few of them?

A. Quite a few of them, I think,—I know quite a few of them.

Q. Now, was he a regular delegate at the District 21 conventions?

A. He was not a regular delegate, but he has been a leading miner, and very often a delegate.

Q. And do you know Mr. Gus Sparling? A. Yes, sir.

Q. How long have you known him?

A. I got acquainted with him in 1903, in Texas.

769 Q. In what capacity?

A. He was a miner when I knew him first, and then he became a board member.

Q. When did he become board member, do you know?

A. I can't remember.

Q. Was he prominent in the district union organization?

A. Very prominent.

Q. Since when?

A. Well, since the inception of the miners' union in Texas.

Q. He was board member from District 21 in 1914?

A. From Texas, yes, sir.

Q. Did he take part in any of these meetings and discussions that you have spoken of in which competitive conditions between the union and non-union fields were discussed?

A. Yes, sir, he was very persistent in having the non-union miners in the lignite fields of Texas organized.

Q. In what connection was that? How did the lignite fields particularly affect him?

A. The lignite fields came in competition with the bituminous fields of Texas, and he wanted the non-union mines organized that were producing this cheap lignite coal.

Q. For what purpose?

A. So that wages would be increased and conditions improved and the cost of producing coal at those particular mines would be raised so they could not compete as they were doing.

Q. Compete with whom?

A. With the union operators of Texas.

Q. You know Thomas King?

770 A. Yes, sir.

Q. How long have you known him?

A. Since 1900.

Q. In what capacity?

A. First as a miner and then as a board member and national organizer.

Q. How did he happen to be appointed national organizer?

A. I suggested him one time to President John Mitchell.

Q. Who was he? A. President—

Q. President of the Mine Workers until 1908?

A. Yes, sir.

Q. And he was succeeded by Thomas Lewis?

A. Yes, sir.

Q. And he was succeesed by John P. White?

A. Yes, sir.

Q. Lewis' term was from 1908 to 1911, White from 1911 to 1916? A. Yes, sir, I believe that is it.

Q. In what connection did you know Mr. King?

A. He was district board member, one of my board members, and he was also international organizer, and I have had him do some work for me when he was not a board member.

Q. What is an International organizer?

A. He is a man that is paid by the International organization, and under the direction of the national president and national vice president.

Q. What is his duty?

A. To do what he is told to do by the national presi-

771 dent and vice president.

Q. What is his particular duty?

A. Organizing non-union men.

Q. Was Mr. King present at any of these meetings and discussions that you have described in which the competitive conditions of the non-union fields, as affecting District 21, were discussed? A. Yes, sir.

Q. Many of them or few of them?

A. Pretty near all of them while I was in office.

Q. He was constantly with you? A. Yes, sir, he was.

Q. Do you know whether he made any investigation, such as you have said you and Mr. Stewart made, to ascertain the origin of those conditions, and their effect?

A. Yes, sir, in Colorado and Alabama, and I think he was in West Virginia. I am not sure about West Virginia.

Q. Now, do you know William McLachlan? A. Yes, sir.

Q. In what connection do you know him?

A. I knew him when he was a miner, by attending conventions.

Q. How long—that is Mr. McLachlan sitting there by Mr. Warrum? A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him quite a number of years.

Q. Since when?

A. About 1903 or 1904, I believe I first met him.

Q. What position did he occupy in the miners' union?

A. He was a board member.

772 Q. Do you know when?

A. When I was elected president the last time he was a board member.

Q. When was that? A. 1914 and 1915.

Q. Do you know what, if any, office he occupied before that? A. No, I do not.

Q. Was he present at any of these meetings and discussions that you have mentioned in which competitive conditions between the non-union fields adjacent to District 21, as related to District 21, were discussed?

A. No, he was not in the movement—I was out of the movement before he got in as an officer, and when I came back in he was a board member, and I didn't have time to discuss anything about competitive conditions.

Q. In 1915? A. In 1915.

Q. Were you present at any conventions in District 21 in which these conditions were discussed, when he was there?

A. Well,—

Q. If you don't remember sure, don't answer the question. No guessing, be positive.

A. He was at conventions where I made a speech here in this city, one in 1914.

Q. Did you talk about that?
A. I talked about Colorado and organizing it.
Q. That was February, 1914?
A. Yes, sir, February, 1914.
773 Q. Now, Mr. Hanraty, did you know Mr. Tasso?
A. Yes, sir, Mike Tasso.
Q. How long have you known him?
A. I knew him quite a number of years. I met him about 1903 or 1904, first, I believe, as a miner in Krebs.
Q. And what, if any, position did he occupy in District 21 organization? A. He was a board member.
Q. When, do you know? A. In 1914.
Q. Did he occupy any office before that?
A. Not that I know of.
Q. Was he prominent in District 21 union organization?
A. Not very.
Q. Not very? A. Not very.
Q. Was he present at any miners' conventions, or miners and operators' conferences that you remember where these competitive conditions between union and non-union mines in District 21 were discussed, in the way you have testified?.
A. No, sir, I don't believe he was, at least I don't remember.
Q. Mr. Hanraty, do you know of Mr Stewart, or both of you informing what you call the rank and file of District 21, as to the existence of the conditions that you have described, and as to their effect on the miners' union in District 21?
A. I don't remember a speech I ever made in my life when I was connected with the miners' union that I did not mention non-union coal taking our markets.
774 Q. Did you frequently impress on the members of the rank and file the importance of this to the miners' union? A. Yes, sir.
Q. On many occasions, or on few occasions?
A. Many occasions. Whenever they became radical, and making demands that I thought was not justified, I would tell them on account of non-union coal that the operators could not afford to pay more than they were and to cut that out, it could not be done.
Q. And after you were president of District 21, did you hear the other officers make similar statements to the miners?
A. No, I don't remember that I ever did.
Q. At conventions?
A. At conventions.
Q. Did you ever hear that discussed at conventions of District 21 after you were president—those matters?

A. President the second time?

Q. No, between 1907 and 1914; were you ever at any conventions of District 21 when those matters were discussed?

A. No.

Q. Were you at a convention in Kansas City when Mr. Schultz put that map up on the wall and explained it, do you remember that?

A. I don't remember it, if I was.

Q. Mr. Hanraty, describe briefly the relation between the national officials and the district officials, in connection with communications and touch that there is between them. As a matter of practice, do the district officials keep the national officials informed continually as to important matters
775 that are going on in their district, and is it their duty to do so, under your organization?

Mr. Warrum: Defendants separately object to that because under the ruling of the Supreme Court they have defined the terms and relationship of the two bodies, and this calls for a conclusion on the part of the witness.

The Court: Perhaps so, but he being an officer, he would be presumed to know. He may answer it.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. You understand the question?

A. Yes, sir. I always kept the national president informed of were I was going regarding the organization of the non-union fields, such as Texas, for instance, and the lignite fields. He knew my every movement in those fields.

Q. Why do you mention that particularly?

A. Because of the fact that I had an understanding with him that I was to organize every non-union- man in our fields that I could possibly organize.

Q. As to other matters, did you in practice, as president of District 21, keep the national officers advised of what you were doing?

A. On matters that would affect other fields.

Q. What do you mean by matters that would affect other fields? A. The other non-union fields.

Q. You mean that you kept him advised of anything connected with non-union operations?

A. Advised—I went to Texas, and I advised President
776 Mitchell I was going there for the purpose of organizing Texas, and that I had sent men down into the mines in Thuber, Texas, to work there secretly, and it was a very dangerous undertaking, but we finally were successful in or-

ganizing Thurber, and we finally organized the whole bituminous fields of Texas.

Q. In matters of local concern,—

The Court: Now, don't make your question too leading, ask him generally.

Q. What class of matters did you keep in close touch with the national president on? As to what class of questions did you consult him, and what, if any, class of questions did you not report to him on in actual practice, and consult and advise with him?

A. Any important move I made, if I thought it was important, I would write or wire President Mitchell.

Q. What class of questions would you regard as unimportant?

A. Well, little things pertaining to contract, that he would have nothing to do with.

Q. What matters would you regard as important?

Mr. Warrum: We renew our objection to this line of questions.

Q. What matters did you advise Mr. Mitchell of as important matters affecting the national organization or other districts, that you have mentioned, in addition to the question of the organization of the lignite fields? Do you remember any class of questions? A. No, I don't remember.

777 Q. Did the rules of the United Mine Workers, as carried out in practice, permit a union miner to work in a mine where non-union men were employed?

A. No, sir, he is not allowed to work in a non-union mine?

Q. Are they never allowed to work there under any circumstances?

A. The president may issue permits to them to work there.

Q. For what purpose?

A. For the purpose of organizing the non-union men.

Q. Did you ever issue such permits?

A. I think I issued 175.

Q. When? A. From 1900 to 1902.

Q. For the purpose of having them go into the mines?

A. Those permits were issued to strikers, I would pick out the leaders, and tell them to return to work in their home towns, their home mine, and then mingle and communicate and talk and be on friendly terms with the non-union miners.

Q. Would it be known that they were union men?

A. Sometimes—I told them to keep it secret, but sometimes they would tell it, they didn't want to be called scabs.

Q. But except where specially permitted by the district or national president, was a union miner ever permitted to work in a non-union or open shop mine, to you knowledge?

A. A non-union miner is not allowed to, he is expelled from the organization if he does so.

Q. And have you known of any exceptions to that?

A. None only what I have stated to you.

Q. Now, Mr. Hanraty, what, if anything, do you know, from personal investigation, as to Mr. Bache's mines?

778 A. Well, I made an investigation of No. 4 one time.

Q. No. 4, Prairie Creek?

A. Yes, sir, Prairie Creek.

Q. In what connection?

A. There was a grievance come up over there, and commissioner Brown and I went over there to settle it. The pit boss told one story and the mine committee another story, and in those days I generally investigated conditions for myself, and I took a lamp and went down in the mine, and while down there I made a reasonably careful investigation of it.

Q. That was Prairie Creek No. 4? A. Yes, sir.

Q. Describe briefly, don't go into detail, but describe what kind of a mine it was, how big the coal veins were, and what development was there, and what development it was capable of being expanded into?

A. I think it was one of the best mines in the district.

Mr. Warrum: We renew our objection.

The Court: Objection overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. When was that?

A. This was in 1907, that I made the investigation.

Q. Go on with your answer.

A. The mine was in good physical condition—

Mr. Warrum: The defendants separately object to the further examination of this witness in regard to the condition of the time, because it was 7 years before the battle.

779 The Court: It is too far off.

Mr. Drinker: We will bring it right down, sir.

The Court: Bring it down first.

Mr. Drinker: I can not with this witness.

The Court: I know, but 7 years—

Mr. Drinker: The purpose of this had nothing to do with damages; is to show the capability of the mine at that time, and I offer to show by this witness—

The Court: Does he know anything about it in 1914?

Mr. Drinker: I don't know.

By Mr. Drinker:

Q. Do you know what, if anything, was the condition of Prairie Creek No. 4 in 1914, as regards its capacity for producing, in relation to 1907?

A. No, sir, I don't know anything about 1914.

Q. Will you describe the vein of coal in which Prairie Creek No. 4 was operated?

Mr. Warrum: We renew our objection because the vein may have been worked out before that time.

Q. What vein did this company work on?

A. Geologically speaking, there was the Hartshorne vein, and as they come around on the crop line—

Q. What do you mean by the crop line?

A. Where the coal comes to the crop.

Q. Coal is laid this way (indicating)?

A. Yes, sir, it comes up to the crop.

Q. Sometimes it comes upon both sides, and sometimes on one side?

A. Yes, sir, the anticline throws the coal up.

780 Q. And the coal is like the leaf in a book, lies in strata?

A. [Likes] leaves in a book, and the Hartshorne vein was like this (indicating).

Q. Like two leaves in a book? A. Yes, sir.

Q. And does this vein run over a big area?

A. Oh, yes, thousands and millions of acres.

Q. How big a vein is there?

A. From 6 to 8 feet thick.

Q. With how much between—

A. About 6 inches, if I remember right.

Q. And what other mines in Arkansas, to your own knowledge, worked those particular veins?

A. Well, I think No. 6.

Mr. Warrum: The defendants renew their objection to these questions as immaterial.

The Court: He may answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. No. 6 Huntington, I believe, was a mine similarly situated as Prairie Creek No. 4.

Q. That is the Central Coal & Coke Company?

A. Yes, sir.

Q. And that was operated in 1914?

A. I don't know about 1914.

Q. Was it before 1914? A. Yes, sir.

781 Q. And it is being operated now?

A. No, it is closed down; I understand it is.

Q. What, if any, other mines besides those two, operated on that vein, if you know?

A. All of the mines of Bolen-Darnell at Hartford, and the Central mine at Hartford.

Q. Any other Bache mines?

A. No. 1 and 2 Prairie Creek were operating at the time—No. 2 was.

Q. Do you know what No. 1 and 2 Prairie Creek were called after Mr. Bache took charge of them?

A. The Coronado mine.

Q. They worked on this big vein?

A. Yes, sir.

Q. Now, were there any other mines in the state of Arkansas or Oklahoma having a vein of coal as large as this?

A. There was not any in the states of Arkansas or Oklahoma that had larger coal that Prairie Creek No. 4.

Q. Now, in mining, what, if anything, does the thickness of the vein have to do with the cost of operation?

A. A vein of coal 6 foot high to 8 foot, coal can be produced cheaper in that kind of coal than any other kind of coal.

Q. Why?

A. Because of the height, you don't have brushing.

Q. What do you mean by brushing?

A. Shoot down rock to make the [height].

Q. You mean the miner has to have a place high enough to go in, and if he has not, he has to take the rock down

782 to make it that height, and he don't get paid for the rock? A. Oh, yes, he does.

Q. The miner does, but the operator does not?

A. No, and that is what increases his cost.

Q. The miner gets paid for the rock? A. Yes, sir.

Q. And if the vein is thick enough to work without cutting away rock, so much to the good for the operator?

A. Yes, sir.

Q. Now, Mr. Hanraty, define what, in the practice of the miners, is known as a local strike, what is a local strike?

A. A local strike is a grievance, real or imaginary, of an individual miner in the mine, and it is not settled, and perhaps prolonged until the miners get dissatisfied and strike.

Q. What kind of a grievance?

A. Most any kind of a grievance, water yardage.

Q. A grievance against what?

A. Against the contract. They think the contract is one way and the boss thinks it says another thing; just like you lawyers differ on terms expressed in contracts or written language.

Q. And that is what is considered a local strike?

A. That is considered a local strike.

Q. Now is a strike against an attempted open shop operation in a field a local strike, as defined by the miners?

Mr. Warrum: We object to this question for the reason that it is a manifest effort on the part of counsel for the plaintiffs to modify, by the testimony of this witness,
783 the ruling of the Supreme Court as to what a local strike consists of, and it is an attempt to place before the jury this in the hopes that the jury will overrule the opinion of the Supreme Court.

The Court: Does he know anything about what happened down in this mine?

Mr. Drinker: Not personally, but the Supreme Court did not have the benefit of any explanation by anyone that knew, as a matter of practice, what a local strike was.

The Court: I think we had better get what happened down in these mines.

Q. Do you know what happened at Prairie Creek?

The Court: Suppose he don't, other witnesses will, and he can testify as to what kind of a strike it was.

Mr. Drinker: The only matter that is of any moment is as to whether it was a local strike or not, which is the issue at stake. I will ask you if the strike against an attempted open shop operation is a local strike?

The Court: Let's have what happened down there, and then it becomes a question of expert evidence, and he can define whether it was a local strike. There is no use of going into all this matter. We don't know where it will lead to.

Mr. Drinker: It will only be one question of him.

The Court: I don't think it is proper until you have before him the situation as it occurred there, and then he can state, if this is susceptible of expert evidence, as to what happened there, whether it was a local strike or general strike or what.

Mr. Drinker: An exception.

784 The Court: You can reserve him as your witness until after your evidence of what happened is in, and if it is susceptible of expert evidence he can testify as to what happened down there.

Mr. Drinker: Can I frame a hypothetical question for the witness? I don't want to keep him here all through our testimony.

The Court: Will it take that long?

Mr. Drinker: It will take 5 or 6 days. I can state a hypothetical question from the testimony of the witness Cheek, that was on the stand yesterday. The only point,—

The Court: I understand the point just as well as you do, but you take a hypothetical question at this time,—I mean his opinion as to what constituted a local strike, without it being made applicable to the facts in this case, will not do us any good.

Mr. Drinker: But there is no dispute but what the issues in this strike was that Mr. Bache attempted to operate open shop, and I wanted to ask if that feature has anything to do with whether it is a local strike or not.

Mr. Warrum: And that is an attempt to modify the written opinion of the Supreme Court.

The Court: I still think it is susceptible to expert evidence, if he had before him what happened down there.

Mr. Drinker: As to how the strike was conducted, I don't think it makes a bit of difference, it is a fact that the miners were trying to eliminate an open shop operation. That is all I wanted to ask him.

The Court: That is an issue, what the miners were trying to do.

785 Mr. Drinker: That might be an issue as to what they were trying to do, but there is no dispute in this case but what the issue was that the Bache strike was against the open shop.

Mr. Warrum: And it was before the Supreme Court and they call it a local strike, and the Supreme Court had before it four thousand pages, and the International and the District constitutions, and they say that it was a local strike, and now they expect to put a witness on the stand and get evidence before the jury that will enable he jury forsooth to overrule the Supreme Court as to what the facts were.

Mr. Drinker: On the other trial there was only testimony as to what constituted a local strike by the president of the defendants, John P. White, who said it was a local strike, and he also said that he knew nothing whatever about the facts. That is what the Supreme Court ruled on. Now I could not find anybody to contradict him then, but here I have somebody.

The Court: The best evidence of what kind of a strike it was was what occurred down there, and what brought it about.

786 Q. Do the words "local strike", as understood by the miners, have any particular significance? Do you know what I mean by that? A. No, sir.

Mr. Warrum: The defendants separately renew their objection.

The Court: The witness says he doesn't know.

Mr. Drinker: He said he didn't know what I meant. He didn't say he didn't know what those words meant, or whether they had any significance.

The Court: If he doesn't know what you meant, he cannot answer the question.

Mr. Drinker: No. I will have to try again.

The Court: Let me ask the witness a question.

Mr. Drinker: Very well, your Honor.

Q. (By the Court) From any source, either the witness' testimony here, or from your actual experience, do you know what happened down at these mines at the time the trouble occurred down there? A. No, sir.

Q. You don't know from any source?
A. By reading in the papers, that is all.
Q. You were not here when the witnesses testified?
A. No, sir, I was not here. I was not in the state when the thing happened.

The Court: I think you will have to reserve him until we get those facts. However, I may say, if in the laws of these concerns these matters are defined, of course, then it is not a question for expert evidence.

Mr. Drinker: Of course not.

787 The Court: Or a question of evidence from this witness.

Mr. Drinker: Of course not, but they are not defined. I know I didn't know what a local strike was until it was explained to me, and I doubt if anyone else would.

The Court: I will have to examine the constitutions and laws of these organizations.

Mr. Drinker: I wanted to let this witness go.

The Court: I understand, but you may not be able to do so.

To which ruling and action of the court the plaintiffs then and there at the time duly excepted and still except.

Q. Mr. Hanraty, where there is an attempt by an operator in the union field to operate his mines open shop, state whether or not that has any effect in any district but the district in which he is located.

Mr. Warrum: Now, if the Court please, the defendants separately object to that question and the evidence sought by it, for the reason that it calls for a conclusion on the part of the witness.

The Court: He has qualified as an expert on certain things.

Mr. Drinker: If he knows the effect of it.

Mr. Warrum: We renew our objection.

The Court: I will let it in.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

A. Yes, sir, I believe it involves every district in the United States and the International organization.

Q. Explain in what way it does so involve the dis-
788 tricts and the International organization.

A. For the reason that,—

Mr. Warrum: The defendants separately object to the question, because it calls for a conclusion, and because it undertakes to secure from the witness testimony that will modify and overrule the decision of the Supreme Court in this case.

The Court: He may answer.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

A. For the reason that the open shop or non-union mine produces coal cheaper than a union mine, and if that were allowed to go on it would only be a question of time until the unions would go out of existence.

Q. I want you to describe very briefly the steps by which that, in your opinion, would happen?

Mr. Warrum: The defendants renew their objection separately, for the same reason.

The Court: Overruled.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. The non-union and open shop operator does not pay the wages paid in union mines.

Q. You have described the difference, in that the non-union mine is operated at a lower cost, but now, granting that, how does the non-union operator affect the union operator, what happens?

A. Because of the fact that he produces coal cheaper and takes the market of the union operator, and as his ton-
789 nage increases his cost decreases.

The Court: I thought that had all been explained by this witness. Don't let us repeat.

Mr. Drinker: I would like very much to bring out this point, which I do not think he has specified in his testimony. It will not take a minute.

The Court: It is so apparent that it does not need any evidence.

Mr. Drinker: I thought so until the Supreme Court held as it did.

The Court: I don't mean that.

Mr. Drinker: I beg your pardon. I misunderstood you.

The Court: I mean the fact that non-union labor can produce coal cheaper than operating with union men. It takes money to keep up unions and organizers and all those things. That is so apparent, that it should not require any time of this or any other witness.

Mr. Drinker: It is not the money it takes to keep the union going that is important, if your Honor please. It is the fact that the tonnage of the operator is decreased, and then if he does not run non-union he must go out of business.

The Court: All that is obvious. Proceed. I don't see the necessity of going all over it again.

Mr. Drinker: I stopped him when he started to tell the difference between them.

Q. I don't know whether you answered this or not. Does the increase in tonnage affect the cost of production?
790 You did explain that. I beg your pardon.
A. Yes, sir, I did.
Q. Mr. Hanraty, what is meant by "trouble of a local character", as understood in practice by the miners?
A. Local character?
Q. Trouble of a local character. What is understood in practice by the miners of that expression?

Mr. Warrum: The defendants separately renew their objection.

The Court: What is it?

Mr. Drinker: I asked him if he knows what the expression "trouble of a local character" is understood to be in practice by the miners?

The Court: I think that is so obvious, so apparent, that one person has just as much knowledge of it as another. I don't think it needs an expert.

Mr. Drinker: It doesn't mean what you think, and it doesn't mean what the Supreme Court thought it meant.

The Court: Objection sustained.

Mr. Drinker: May we have an exception to your Honor's ruling?

The Court: Yes.

Q. Mr. Hanraty, as administered in practice in the Miners Union, was it the duty and action of the district president,

when an operator in the union field attempted to run open shop, to take the question up with the international officers?
A. Yes, sir. I would have done it.

Mr. Warrum: If the court please, before the answer, the defendants separately renew their objections for the
791 reasons heretofore given. It is an attempt to procure evidence from this witness that will modify the ruling of the Supreme Court.

The Court: I think it is proper to show what was actually done.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Q. Mr. Hanraty, in practice, when an operator attempted to operate open shop in a union field, did you take that up with the district president?
A. The international president?
Q. The international officers? A. Yes, sir.

Mr. Warrum: Just a moment, please. I move to strike out the answer, for the reasons heretofore given, and for the reason that the answer was made before I had a chance to make my objection.

The Court: Let it stand for the present.

To which action and ruling of the court the defendants and each of them at the time duly excepted and still except.

Q. You said yes. Why?

Mr. Warrum: The defendants renew their objection.

The Court: Overruled.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

Q. Why?

Mr. Drinker: I will ask to have the question read to the witness.

792 (Question read to witness by the reporter, as follows:

"Mr. Hanraty, in practice, when an operator attempted to operate open shop in a union field, did you take that up with the International officers?")

Mr. Warrum: Since the question is re-asked, the defendants renew their objections.

The Court: The same ruling.

To which ruling and action of the court the defendants and each of them at the time duly excepted and still except.

A. I think it is of a serious nature to union operators, and miners, and that the International president should be acquainted with the facts where there is an attempt made to work non-union miners in the district.

Q. Did such an attempt involve any miners except those in the particular districts where you were?

Mr. Warrum: The defendants renew their objection.

The Court: Oh, we must have what was done in this case.

Mr. Drinker: This will be the last question on this point.

The Court: I will sustain the objection.

Mr. Drinker: We ask that we may be allowed an exception.

The Court: Is there any more direct examination.

Mr. Drinker: One more question.

Q. Mr. Hanraty, would the starting up of a mine open shop in Arkansas, having a production of 4000 tons a day, affect the relations between the union miners and union operators in District 21, would that be large enough to have any [affect] upon the situation?

793 Mr. Warrum: If the court please, the defendants separately object to that question.

The Court: I think so. Objection sustained.

Mr. Drinker: We ask that an exception be noted to the ruling of the court.

Your Honor would not care to allow me to present this further to your Honor?

The Court: You may is you desire.

Mr. Drinker: He says the non-union mines would affect the union operators. I want to know how big a union mine must be before it will do that. The Supreme Court said the Bache-Denman mine produced only 5000 tons a week, and was too small to have any effect. As a matter of fact with the greatest respect to the Supreme Court, it misread the testimony. The testimony was 5000 tons a day. I want to know how big a mine it would take to produe that effect. This man

knows what he is talking about, and he is the best evidence we could possibly get on this subject. This is right along the line of the question we are here to try.

The Court: I suppose anyone knowing the total production of this mine or other mines, any person with common judgment, could say with respect to that.

Mr. Drinker: If your Honor please, this man is right out of the miners organization. The question is whether Stewart and these other people were afraid of having the Bache mines run open shop and we would like to know whether the capacity and production of that mine is big enough to affect that situation.

The Court: Let us have the capacity and production.
794 I think it is a matter of general knowledge.

Mr. Drinker: That is, perhaps, a natural conclusion, but the opinion of the Supreme Court is such that I would like very much to have a record which will cover specifically the point, from this witness, who knows more about it than anybody else around here. He knows what the miners knew and what the situation was.

The Court: After all, as to what sum in comparison with another sum, is not a question for expert knowledge at all.

Mr. Drinker: But it is a question as to how big a mine would have to be in order for them to be afraid of that situation. If it only produces one hundred tons a day, they might say it was negligible, but when it gets to a certain point, they could say they were afraid of it.

The Court: I will sustain the objection.

Mr. Drinker: We ask an exception be noted to the ruling of your Honor.

You may cross-examine.

Cross-Examination

By Mr. Warrum:

Q. You were born in Scotland? A. Yes, sir.
Q. And commenced mining at nine years old?
A. Yes, sir.
Q. And you came to this country at the age of 14 years?
A. Yes, sir.

Q. Did you continue mining after you came to this
795 country? A. Yes, sir.
Q. Whereabouts? A. Hazelton, Pennsylvania.

Q. And from Pennsylvania you came to the Indian territory A. Illinois.
Q. Illinois first? A. Yes, sir.
Q. Then where? A. Kansas.
Q. Kansas?
A. Yes, sir, and about four or five months in Iowa.
Q. When did you come to the Indian Territory?
A. I came to the Indian Territory in 1882.
Q. And you belonged to a labor organization in Pennsylvania, did you? A. No, sir.
Q. When did you join the Knights of Labor?
A. I joined the Knights of Labor in Minonk, Illinois.
Q. What time?
A. Well, I was about sixteen years old then, I think.
Q. You were about sixteen years old when you joined the Knights of Labor? A. Fifteen or sixteen.
Q. When did you join the United Mine Workers?
A. It was in 1889 that the Knights of Labor turned over their coal work to the United Mine Workers of 1026.
Q. You remained a member of the Knights of Labor
796 until you joined the United Mine Workers?
A. Yes, sir.
Q. When the mining part of the Knights of Labor became a part of the United Mine Workers? A. Yes, sir.
Q. And you remained a member of the United Mine Workers up to what time?
A. Up to the time I took charge of the mines.
Q. What year was that?
A. I think it was 1918.
Q. Since that time you have been operating a mine?
A. Yes, sir, operating a mine.
Q. Now, during this period that you were a member of the United Mine Workers you heard and engaged in a good many discussions among members of the District Board and miners generally, did you not? A. Yes, sir.
Q. Regarding the effect of non-union coal production on union coal production. Is that right? A. Yes, sir.
Q. That was discussed by the miners and by yourself?
A. Yes, sir.
Q. Altogether with reference to the effect it would have upon your union, upon your wage scale, upon your working conditions, is that right? A. Yes, sir.
Q. And that is all, isn't it?
797 A. The operators discussed it, too.
Q. Ah, the operators, when they would meet with you in convention, just as you, as an operator now, when you meet in convention with the miners would undertake to meet the

demands for wage scales and working conditions for the making of a contract by the argument that they could not agree to your demands on account of competition with non-union coal. Is that right? A. That is right.

Q. That is right? A. Yes, sir.

Q. And when you would meet with the officers of the miners or with the members of the miners attending these conferences and discussion, you used every argument you could think of to induce them to accept your wage scale contract which contained your wages, your working conditions and other matters, is that not right? A. That is right.

Q. And the concern the miners had, and the miners officers and the representatives in their own discussions in the district meetings, as you say you discussed it often, and in discussions that you had with officers, as well as the discussions with the operators, was to preserve the union scale and union conditions of work, is that not right?

A. Yes, sir, in a way it is right.

Q. Now, when Arkansas was organized, I believe you say 1903, you spoke about certain conditions that were imposed upon the operators by the miners. You were a union
798 miner at that time, were you not?

A. I was a union miner in 1903, do you mean?

Q. Well, whenever Arkansas was organized?

A. I was district president in 1903.

Q. What year was it, please? A. 1903.

Q. I am asking you, sir.

A. When I joined the union?

Q. No, when Arkansas was organized? When did the Arkansas mines become unionized?

A. They became unionized when the operators signed the contract in 1903.

Q. That is what I am trying to get at.

A. Yes, sir.

Q. 1903? A. Yes, sir.

Q. You stated on direct examination that onerous conditions were imposed upon some of the operators?

A. I made this statement; that in the conference in Pittsburg, Kansas, there was a motion passed that a 10 per cent. or 12 per cent. advance be allowed with the same rules and customs that are now in vogue in each particular mine.

Q. That is when the operators signed the first contract with the union miners? A. Yes, sir.

Q. They met at Pittsburg? A. Yes, sir.

799 Q. And entered into that contract?

A. Yes, sir.

Q. What you would have this jury understand is that the conditions that had prevailed in those mines with reference to the number of men that would work in a room and other conditions under non-union operation, should continue with a 10 per cent. increase under union operations. Isn't that correct?

A. No, sir, non-union operators make their own conditions.

Q. All right. What did you mean when you say at Pittsburg the same condition should prevail that had prevailed in different mines, with a 10 per cent. increased wage?

A. We were talking there as union operators and miners in making a contract.

Q. Was that the first contract made between the operators and miners?

A. No, sir. We had contract in two or three of the small mines.

Q. Had you a contract with Mr. Bache's mine before 1903?

A. No, sir.

Q. And you didn't have a contract with the Central Coal & Coke Company? A. No, sir.

Q. The Central Coal & Coke Company had been operating under its Pittsburg agreement non-union, and so had Mr. Bache's mine? A. Yes, sir.

Q. And the Central Coal & Coke Company conditions in the mine called for two men in a room under non-union conditions? A. Yes, sir.

800 Q. And Bache under non-union conditions, had worked his mines under the Pittsburg contract with one man in a room?

A. Bache was then operating in Oklahoma.

Q. I am talking about the mines you addressed yourself to on direct examination, at Prairie Creek. Wasn't there just one man in a room? A. Prairie Creek?

Q. Yes? A. Yes, sir.

Q. And that was simply continuing the non-union conditions in your union contract with a 10 per cent. increase in wages? Is't that true? A. Yes, sir.

Q. You say the conditions have never been changed?

A. I meant Mr. Bache's mines in Oklahoma. They were non-union until 1903.

Q. Weren't his mines at Prairie Creek non-union until 1903?

A. I don't know of any mines of his over there in 1903.

Q. That is, since that, is it?

A. In 1903, Mr. Bache didn't have any mines that I know in Arkansas.

Q. When did he have any, according to your information and knowledge?

A. The Prairie Creek Coal Company owned those mines in 1903.

Q. When did he first have mines at Prairie Creek?

A. Well, sir, I don't know.

Q. You don't know when the union made a contract with him for the operation of the Prairie Creek Mine?

A. I think I was chief mine inspector at that time.

Q. Do you remember the McCurtain field?

A. Yes, sir.

Q. You were president of the district at that time, were you not? A. Yes, sir.

Q. Were there not some changes made in working conditions over there?

A. I made some changes, and the miners tried to throw me out of office because I did it.

Q. Some were made were they not? A. Yes, sir.

Q. You were eventually thrown out of office, were you not?

A. Yes, sir.

Q. Later on. A. Yes, sir.

Q. That was in 1915? A. Yes, sir.

Q. You were also thrown out of the office of mayor of some town in Oklahoma, is that right? A. Yes, sir.

Q. Now, you answered on direct examination that your interest in the organization in the Texas field was that the miners wages might be increased and conditions enhanced. That is right, is it not? A. Yes, sir.

Q. And that was the object, and the sole object of the
802 miners, while you were associated with them, insofar as they attempted to organize non-union fields, and insofar as they felt concerned with the competition of non-union fields, it was in regard to their wages and working conditions?

A. Yes, sir. It was to increase the cost to the operators.

Q. Now, you say you issued 175 permits, from 1900 to 1902 to work in non-union mines; but otherwise the members of the union would not work in non-union mines?

A. Yes, sir.

Q. And you defined the three group characters of mine operations in your direct examination as non-union, closed shop and open shop? A. Yes, sir.

Q. Now, if the miners, as a matter of fact, would not work in a mine except they had a contract, there is no such thing as the open shop is there?

A. Well, there is operators who knowingly hire men when they know they belong to the union.

Q. But you say the union men would not work in an operation of that kind?

A. I know lots of union men who used to be union men, working in Pittsburg and over here at McCurtain.

Q. Didn't you state on direct examination that they could not do that?

A. They cannot according to the laws of the Miners Union.

Q. But they do work in non-union mines, and in the closed shop where they have a contract. Is that right?

803 A. There is no contract in the [close] shop. Oh, closed shop? Yes, sir.

Q. I asked you about the closed shop. A. Yes, sir.

Q. There was a contract in the closed shop?

A. Yes, sir.

Q. And in the non-union mine or open shop mine, each individual miner agrees with his employer, superintendent, manager, whoever he may be, as to his wages, what he will get, what conditions he will have, the hours he will work, and such as that. Isn't that right?

A. Some non-union miners have a working agreement with their employer such as Pittsburg.

804 Q. Do they have collective bargaining?

A. No, sir, but they have what is termed committees, that when a grievance comes [p] up they meet with the officers and discuss and settle it.

Q. They will meet with the committees of their employes?

A. Yes, sir.

Q. And discuss grievances? A. Yes, sir.

Q. But they have no contract fixing the wage scale?

A. No contract with the union.

Q. And that is the reason that the union insists on the closed shop, and generally, at least, refuses to work alongside non-union men, because they want to protect their working conditions and wage scale? A. That is correct.

Q. Now, then, these permits which you say you issued, some of them, either with or without your advice, the men to whom you issued them secretly went to work without saying anything about it? A. Yes, sir.

Q. Now, Mr. Hanraty, isn't it a fact that the reason they did that is because, in your experience as a union man, as you recall it, they would have been assaulted and beaten and driven away from the mines if they had announced they were union men trying to secure employment at that place?

A. I don't think so.

Q. You never knew of a case of that kind?

A. A case of that kind?

805 Q. Yes. A. I knew it in Colorado.

Q. And you knew it in West Virginia, did you not?

A. I never was in West Virginia.

Q. Haven't you known it in Pennsylvania?

A. I was never in Pennsylvania organizing. I knew it in Colorado.

Q. So far as you know, there was no reason why, when they went to work under those permits you issued, that they should conceal the fact that they were union men?

A. It was up to them to decide.

Q. Do you remember when Mr. Bache, operating either in Oklahoma or Arkansas, his companies, entered into a contract with the United Mine Workers? A. Yes, sir.

Q. When was the first contract with his Oklahoma operations or companies and the United Mine Workers?

A. Mr. Bache was chairman of the joint conference in the County Court over here in 1903.

Q. 1903? A. Yes, sir.

Q. Where was that?

A. Right over here in the County Court at Ft. Smith.

Q. At that time he was representing his Arkansas companies, was he not?

A. No, sir, he was representing his Oklahoma companies.

Q. He was representing his Oklahoma companies?

A. I think so, yes, sir.

806 Q. And he was chairman of the joint conference?

A. At one of the times I remember that.

Q. Do you remember when any of his Arkansas companies joined the joint conference? A. I don't remember.

Q. You do remember that when you were here at some of the joint conferences Mr. Bache was there representing other companies that he had organized and was operating in Arkansas? Is that right?

A. I can't remember when Mr. Bache came to Arkansas. When I knew Mr. Bache he was operating Oklahoma mines.

Q. You were down at Prairie Creek, going down in the mine with a lantern, because of grievances between Mr. Bache and some of his men, in 1907? Is that right?

A. My recollection is the Prairie Creek Coal Company owned that mine then.

Q. Well, all right.

A. Mr. Boone, I thought, operated them mines at that time.

Q. Now, I will ask you this question: Keeping in mind the Prairie Creek Coal Company, the Coronado Coal Company, the Mammoth Vein Coal Company and the Hartford Coal Company, state when, if you know, or approximately when, those companies entered into contractual relations with the United Mine Workers.

A. I don't remember. I believe I was mine inspector at that time.

Q. Do you remember seeing any of the representatives or officers of these companies at the joint conference?

A. No, sir.

807 Q. You can not recall any meeting at which Mr. Bache or Mr. Denman or any officers of the Prairie Creek Coal Company, the Coronado Coal Company, the Kali-Inla Company, attended joint conferences of operators and miners?

A. I don't think I was in the business when they come over here?

Q. Let me ask you this question: He was chairman of the joint conference in 1903 that met over here at Ft. Smith?

A. Yes, sir.

Q. Was it discussed then, the effect that competition from non-union fields would have upon the mining industry and upon the wage scale demands on the operators, at that meeting?

A. No, not at that particular meeting, as I remember it.

Q. You never heard Mr. Bache engage in these discussions? A. I don't remember that I ever did.

Q. You have heard everybody else engage in them, but you don't recall hearing Mr. Bache engage in these discussions concerning the effect of non-union production in Colorado and other places upon the wage scales of union mines in Arkansas?

A. That is the only meeting I ever remembered Mr. Bache attending.

Mr. Warrum: That is all.

The Court: Stand down.

Mr. Drinker: I would like to ask a few more questions, if your Honor will permit.

The Court: Very well.

Redirect Examination

By Mr. Drinker:

808 Q. Mr. Hanraty, Mr. Warrum has referred to your being thrown out of office at McAlester. Just why were you recalled at McAlester. A. As mayor?

Q. Yes.

A. I was elected on a law enforcement platform.

Mr. Warrum: If the court please—

The Court: I don't see where that is material.

Mr. Drinker: He is trying to throw mud at this man.

The Court: He has stated he was recalled, but why is a mere incident.

Mr. Drinker: He is trying to throw mud at this witness.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Q. Mr. Warrum has also called attention to the fact, quite pointedly, that you were discharged as President of District 21, the second time you went in, in 1915. Why was that?

Mr. Warrum: If the court please, we object. That was brought out by them on direct examination. I didn't bring it out on cross examination. He stated himself in answer to Mr. Drinker's question on direct examination that fact, and I asked him about that on cross examination, and that is all.

The Court: Let him answer.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. Why were you thrown out as president?

A. There were seven charges presented against me. One of them was the fact that we made a contract at McCurtain, and in that contract the companies could not compete with the other operators, the other union operators, for the rea-
809 son that the scale they had was so far in advance it increased the cost of production, and they couldn't compete with the operators, and they threatened to go non-union. We were not in a position to go non-union, and I went over there and give them a reduction in wages so the companies could compete with the competition on the market in Oklahoma and Arkansas.

Q. Did any of the charges on which you were thrown out of office have to do with the Prairie Creek strike?

A. Not one.

Q. Weren't there any charges connected with the disbursement of funds in that? A. Oh, yes.

Q. What was that charge?

Mr. Warrum: Now, if the court please, we renew our objection.

The Court: I think that is too incidental. It takes too much time to go into all these details. I will sustain the objection.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. Mr. Hanraty, under a union contract does the union miner agree to do any work?

Mr. Warrum: If the court please, the contract must speak for itself.

The Court: Contracts have been offered.

Mr. Drinker: Yes, but it is a pretty long document.

The Court: It is the best evidence of that fact.

810 To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Q. Mr. Hanraty, in answer to Mr. Warrum's question, in connection with Mr. Bache's operation of these mines, you testified that you did not remember Mr. Bache discussing these competitive conditions. Do you remember that he did not discuss them? Are you sure that he did not say anything about these conditions?

A. I am pretty near sure he did not.

Q. You are pretty near sure he did not? A. Yes, sir.

Q. Were those conditions discussed at that meeting?

A. This meeting down here?

Q. Yes. A. No, sir.

Q. They were not?

A. No, sir, not at that meeting.

Q. In connection with the open shop you say that union miners have sometimes, if not frequently, gone to work in open shop operations. What becomes of their union membership? A. They are expelled from the organization.

Q. And they continue to work there? A. Yes, sir.

Q. Mr. Hanraty, you said, I believe, that Mr. Boone was operating the Prairie Creek Coal Company before Mr. Bache acquired it. Was that one of the companies that had signed up with the union before 1903?

A. Yes, sir, one of the first companies to sign a contract with me.

811 Q. That was before 1903? A. Yes, sir.

Q. Do you remember when it was?

A. It was right at 1900, right after I was elected president.

Q. And when Mr. Bache acquired these Arkansas companies he found them already signed up? A. Oh, yes.

Q. Did Mr. Bache indicate to the miners, during your connection and acquaintance with him, whether he welcomed the union contract or was opposed to signing a union contract?

Mr. Warrum: If the court please, that is objected to separately by the defendants because it is leading and suggestive, and intended to frame the answer of the witness.

The Court: Not only so, but I suppose he either did or did not sign a contract.

Mr. Drinker: I want to know whether he did it because he wanted to or because he couldn't help himself. He found the thing there and had to take it or face a strike. I want to find out about that.

The Court: Ask Mr. Bache about that. He will know more about that.

Mr. Drinker: He knows what Mr. Bache said to the miners about it. What Mr. Bache had in his mind would not be important, so much as what the miners thought about it.

The Court: Let him answer it.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. Do you understand the question?

812 A. When I went out office there were no non-union mines in District 21. It was a closed shop everywhere.

Q. That was not the question. Was Mr. Bache anxious to work under a contract with the union, or did he express himself and give you to understand that he would rather work non-union, all the time you were in?

Mr. Warrum: I object to the question because it is leading and suggestive, and calls for a conclusion on the part of the witness.

The Court: Yes.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. (By The Court) Did Mr. Bache favor the union scale or not?

A. Mr. Bache was very much opposed to the union scale up until 1903.

Q. Did he favor it after that?

A. Yes, sir, he seemed to.

Q. (By Mr. Drinker) Did he ever discuss it with you?
A. Afterwards?
Q. Yes. A. Not that I remember.
Q. Then all you know about it is that after 1903 he signed up and stayed signed up?
A. Stayed signed up, yes, sir.
Q. You don't know anything about it of your own knowledge? A. No, sir.

Mr. Drinker: That is all.

The Court: Stand down.

(Witness Excused.)

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813 (After the witness left the stand he was engaged in conversation by Mr. Drinker, which was inaudible to the reporter).

Mr. Warrum: I think this ought to be in the hallway.

Mr. Drinker: I don't quite understand.

Mr. Warrum: I was objecting to this conversation in the presence of the jury. The hallway is the place to instruct the witness.

Mr. Drinker: I was not intending to do anything wrong and I think this is entirely uncalled for.

The Court: I did not understand what was said. I was trying to get another witness.

Mr. Drinker: All I said to the witness was that the Court said he would have to wait until we had offered other testimony, and Mr. Warrum implied that I was doing something wrong.

The Court: Oh, I think not.

Mr. Drinker: I don't know why else he objected to it. I am not accustomed to having those kinds of things said about me in court.

Mr. Warrum: I will withdraw it. Probably I spoke like an attorney will sometimes.

Mr. Drinker: I think so.

The Court: It is withdrawn. Call your next witness.

GEORGE MANUEL, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. What is your full name? A. George Manual.

814 Q. What is your present position with the Southwestern Coal Operators Association?

A. Assistant Secretary and Treasurer.

Q. Where are the offices of the Association?

A. 519 Keith & Perry Building, Kansas City.

Q. How long have you occupied the position of Assistant Secretary-Treasurer of the Southwestern Coal Operators Association? A. Since February, 1918.

Q. Have you produced at this time, pursuant to a subpoena duces tecum issued by the plaintiffs, certain documents of the Southwestern Coal Operators Association?

A. Yes, sir.

Q. I will ask you to identify and enumerate the different documents you have produced?

A. Do you want them just as they come here?

Q. Could you arrange them chronologically?

A. I have them arranged now in a different way.

Q. You may enumerate them as you come to them, and they can be put in chronological order later, just enumerate them as you come to them?

A. The Interstate Convention of 1906, joint conference between the miners and operators of Illinois, Indiana, Ohio and Pennsylvania, January 25th, to February, 1906.

Mr. Warrum. May I ask a preliminary question.

The Court: Yes.

Q. (By Mr. Warrum) Mr. Manual, you say you were

815 Secretary of the Southwestern Coal Operators Association? A. Assistant Secretary.

Q. Assistant Secretary? A. Yes, sir.

Q. Is it part of your duties and are you the official custodian of the Joint Conference Proceedings in the Central Competitive Field, or do you just happen to have that?

A. It is the record that is in our offices.

Q. You also have there the Bible and other books, have you not? A. Not that I know of.

Q. There are other books around that office?

A. Yes, sir.

Q. As the Assistant Secretary of the Southwestern Coal Operators Association—

Mr. Lucas: We will withdraw it if there is going to be any question about it.

The Court: All right, let us go to something else. The records of his office are what you have inquired for here, as I understand.

Q. (By Mr. Lucas) You may proceed Mr. Manual.
A. A joint conference of the miners and operators, Districts 14, 21 and 25, held at Kansas City, March 1st, 1912.

Mr. Lucas: We ask that this may be marked as an exhibit.

(Whereupon the document [refered] to was marked by the reporter, "Plaintiff's Exhibit 1, October 17th, 1923, Cale R. Jones, Reporter".)

Q. Go right straight through with them, please. Just
816 give us the titles of the books you have produced?
A. Joint Conference of Miners and Operators of Districts 14, 21 and 25, held in Kansas City, June 8th, 1914.

(The document referred to was thereupon marked by the reporter "Plaintiffs' Exhibit 2, October 17, 1923, Cale R. Jones, Reporter").

Q. And what is the next one?
A. Joint Conference Between Districts 14, 21 and 25, U. M. W. of A. and Representatives of the Southwestern Interstate Coal Operators Association, held in Room 500, Keith & Perry Building, June 8th, 1914.

(Said document was thereupon marked by the reporter, "Plaintiffs' Exhibit 3, October 17, 1923, Cale R. Jones, Reporter")

A. (Continuing) Joint Conference of the Executive Board of Districts 14, 21 and 25, and the Executive Board of the Southwestern Interstate Coal Operators Association, held at the Coates House, Kansas City, Missouri, April 18, 1910.)

(Which said document was thereupon marked by the reporter, "Plaintiffs' Exhibit 4, October 17, 1923, Cale R. Jones, Reporter.")

A. (Continuing) Statement of Southwest Interstate Coal Operators Association's position in connection with present controversy with the United Mine Workers of America, May 25th, 1910, without the map.

(Which said document was thereupon marked by the reporter, "Plaintiffs' Exhibit 5, October 17, 1923, Cale R. Jones, Reporter.")

817 A. (Continuing) May I make an explanation in relation to this last one?

Q. Yes.

A. This [booket] was called for in the subpoena, which also called for the map that was attached to the booklet, designating certain pages in the booklet. Unfortunately, in our library the map was missing. The booklet was there, but the map was missing so that is not produced.

Q. Very good. Go ahead with the others.

A. Joint Interstate Conference between the Southwestern Interstate Coal Operators Association and United Mine Workers of America, 1908-1910 contract.

(Which said document was thereupon marked by the reporter, "Plaintiffs' Exhibit 6, October 17, 1923, Cale R. Jones, Reporter.")

A. (Continuing) Joint Conference Proceedings with Districts 14, 21 and 25, Held at Turner Hall, Kansas City, Missouri, February 23, 1910.

(Which said document was thereupon marked by the reporter "Plaintiffs' Exhibit 7, October 17, 1923, Cale R. Jones, Reporter.")

A. (Continuing) Joint Conference of Miners and Operators of Districts 14, 21 and 25, Held at Pittsburg, Kansas, July 12th, 1904.

(Which said document was thereupon marked by the reporter "Plaintiffs' Exhibit 8, October 17, 1923, Cale R. Jones, Reporter.")

818 A. (Continuing) Joint Conference of the Miners and Operators of Districts 14, [25 and 25,] Held at Pittsburg, Kansas, July 13th, 1903.

(Which said document was thereupon marked by the reporter "Plaintiffs' Exhibit 10, October 17, 1923, Cale R. Reporter.")

A. (Continuing) Proceedings of Joint Conference at Ft. Smith, Arkansas, August 18, 1903.

(Which said document was thereupon marked by the reporter "Plaintiffs' Exhibit 10, October 17, 1923, Cale R. Jones, Reporter.")

A. (Continuing) Joint Conference Proceedings, District 25, August 31, 1910, Pages 1 to 361.

(Which said document was thereupon marked by the reporter "Plaintiffs' Exhibit 11, October 17, 1923, Cale R. Jones, Reporter.")

A. (Continuing) Did I call March 1st, 1912?
Q. Yes. That was the first one.
A. The supboena read "March 1st, 1922".
Q. Yes, that was a mistake. Just leave out any documents that you brought of that kind. It will not be necessary to refer to them? A. All right.
Q. Will you explain to the court and jury where you got these books you have produced and enumerated?
A. We had them in our vault in the Association room.
Q. Are they the official files of the Southwestern Coal
819 Operators Association, with which you are at present connected? A. Yes, sir.
Q. In your capacity as Assistant Secretary are you custodian of the records of the Southwestern Coal Operators Association at Kansas City? A. Yes, sir.
Q. Did you personally cause those books to be taken out of the files of the office? A. Yes, sir.
Q. In addition to your official capacity, are you able to identify these files and records as the official records and, limiting your answer to such records as pertain to District 21 of the United [Miner] Workers of America, I will ask you if you have any personal experience in connection with these joint conferences whether you personally attended some of these joint conventions? A. Yes, sir.
Q. Based on your attendance, your personal attendance at these conventions at which some of these records were made, do you recognize them as transcripts of what took place at those conventions? A. Yes, sir.
Q. With reference to the records that affect District No. 21, I will ask you whether the operators had been in the habit of referring to those books which you have produced here, as the records of what transpired in the various joint conferences. A. Yes, sir.

Mr. Warrum: If the court please, I move to strike
820 the answer out.

The Court: I understand no question is raised as to these being the records.

Mr. Lucas: I believe there was no question raised as to the authenticity of these records. We would like to show

these records have been in the office, and were frequently consulted and were referred to by various parties.

The Court: You have been using records of similar character all through the trial?

Mr. Lucas: Yes, but they have been the defendants own records.

The Court: I think if no objection is raised, they are prima facie.

Mr. Drinker: May I ask if the other side will admit they are the records?

The Court: They raise no question.

Mr. Drinker: We are not going to offer them in evidence now.

Mr. Warrum: I will withdraw the objection.

Q. In the subsequent meetings of the two parties, the miners and the operators, have the parties at those conventions used these records and referred to them as the transcript of what had taken place in previous meetings?

A. Yes, sir.

Q. By both parties to the contract? A. Yes, sir.

Q. The miners and the operators? A. Yes, sir.

821 Q. These particular books you have produced here are records of the joint conferences involving particularly District 21?

A. Yes, sir. May I make a qualifying statement?

Q. Yes.

A. That is, when they hold their conferences they usually hold the meetings in our office rooms in Kansas City, and if a question arises of any particular question that came up under these books, they generally get these books and refer to them and find that one particular thing.

Mr. Lucas: You may cross-examine.

Mr. Warrum: No cross-examination.

The Court: Stand down.

(Witness excused)

The Court: It is about time for the usual noon recess. We will suspend until 2:00 o'clock this afternoon.

(Whereupon at 12:30 P. M., after the usual admonition to the jury, a recess was taken until 2:00 o'clock P.M.)

822 After Recess. 2 P. M.

The Court: Proceed with the trial.

Mr. Drinker: I have picked two witnesses, one to describe the riot, and another the battle, and I will read their depositions while Mr. Hanraty is here, and then ask him that other question.

We wish to offer the testimony of ARCH CALDWELL, found on page 1365 of the former record, who is now dead.

Mr. Lucas (reading): "Arch Caldwell, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. McDonough:

Q. Where do you live, Mr. Caldwell?
A. Johnson County, Arkansas.
Q. What business are you engaged in?
A. Mining business.
Q. Speak out loud. A. Mining.
Q. How long have you lived in Johnson County?
A. 41 years.
Q. What is your age? A. 41 years old.
Q. Born there? A. Yes, sir.
Q. Were you employed to go to Prairie Creek by any one in April, 1914? A. Yes, sir.

823 Q. Prior to that time how long had you been engaged in the coal business, if at any time?
A. I had not been engaged in it.
Q. What kind of business had you been doing?
A. Saw milling.
Q. Farming? A. Saw mill.
Q. In Johnson County? A. Yes, sir.
Q. Who employed you to go to the mine in Sebastian County?
A. Well, Mr. Eustis was the first man that spoke to me anything about it, and said Mr. Bache had saw him over at Clarksville.
Q. Were you employed then by Mr. Bache, or someone for him? A. Yes, sir.
Q. When did you go to the mine?
A. On the 3rd day of May?
Q. The 3rd day of May,—you mean May?
A. The third day of April.

Q. What kind of work were you employed to do, or were you employed as a guard or watchman, or to do work, and if so, how? A. Yes, sir, as a guard.

Q. As a guard? A. Yes, sir.

Q. Were you employed at the same time that Mr. Bailey was employed? A. Yes, sir, he and I went there together.

Q. Were you there on Sunday, April 5th, the day be-
824 fore the riot? A. Yes, sir.

Q. What were you doing there?

A. Well, I was asleep that day.

Q. Did you work at day time or night time?

A. The first evening I was there I worked, commenced work at little after dinner, about 1:00 o'clock, and I worked that evening and that night.

Q. And slept on Sunday? A. Yes, sir.

Q. Now, where were you on the next morning, the day of the riot? A. Well, I was asleep.

Q. Had you been on watch on Sunday night?

A. Yes, sir.

Q. And then you went to sleep Monday morning, didn't you?

A. Yes, sir, about 9:00 o'clock. I guarded No. 3.

Q. What was the first knowledge you had of a riot, or any trouble?

A. Well, I heard a noise, it woke me up. I was up at the guard house, and I heard some hollering and whooping, and it woke me up, and I got up, and then I heard the band playing, and then I stepped out on the porch and a big bunch of men were coming from the school house to the mine. Well, they was from the office, they were scattered from the office clear back to the school house when I first saw them, and I only had put my pants on, I didn't have my shoes on, and I stepped back in and put my shoes on, and then stepped back out on the porch again, and by that time they were all around over the mine there, they had broke in.

Q. Did you see Elmer Searles there that morning?
825 A. Yes, sir.

Q. Did you see him when you came out after you had dressed?

A. Yes, sir, I saw him coming along up the road toward the house where I was at.

Q. Just state what you saw?

A. I saw a bunch of men after him throwing rocks.

Q. Were they throwing rocks at him? A. Yes, sir.

Q. And he was running? A. Yes, sir.

Q. Did you see Jake Ritchie? A. Yes, sir.

Q. What was he doing? A. He was running, too.

Q. About how many men, if you can tell, were running after him?

A. I don't know, it looked to me like two or three hundred men, that is the whole bunch there was from the house scattered clear back to the mine, it was three or four hundred yards to the mine.

Q. Were they throwing anything besides rocks?

A. No, I don't suppose, rocks and anything they could get hold of.

Q. Were you at what you call the guard house when Looper and Sylsberry came there? A. Yes, sir.

Q. Did you see them?

A. Yes, sir, I first saw Mr. Sylsberry at a little bridge, about half way between there, he got down there, he fell down at the bridge.

826 Q. Did you see whether or not they were injured?

A. Yes, sir.

Q. What was done with Sylsberry?

A. Well, he was brought up to the house, some fellows brought him up to the house, and he was bloody, and they got some water and washed him.

Q. What was done with him finally?

A. They brought him to Fort Smith.

Q. State what was done to the whistle, if anything?

A. The whistle was blowing all the time, and the mud valve, someone turned the mud valve off, I could see it blowing.

Q. What was done to the boilers, if you know?

A. Well, the water was all let out of the boilers. The boilers was listed, and the flues were all loosened up in the boiler.

Q. Mr. Caldwell, did the crowd or anybody do anything with a flag there?

A. Yes, sir, there was a fellow put a flag up on the tipple.

Q. What kind of a flag?

A. Well, it was a United States flag.

Q. Anything else with it?

A. Yes, sir, there was a banner.

Q. A what?

A. I believe there was some kind of a banner.

Q. Banner. A. Yes, sir.

Q. Put up with the American flag? A. Yes, sir.

827 Q. Do you know what banner it was?

A. Well, it says on that, it said, I believe it said on the banner "Union men's country" or county, or something like that.

Q. That was put up alongside of the American flag?

A. Yes, sir.
Q. And both put up on the tipple? A. Yes, sir.
Q. Did you have any conversation with these men that came in there around the mine? A. Yes, sir.
Q. Or hear any of them talk?
A. Yes, sir, I talked with two.
Q. State what you heard said.
A. Well, when they brought Mr. Sylsberry and Mr. Looper up there, there was a fellow looked up at me and said, 'Slim, what are you doing here' and I said, 'I am doing just like the rest of the boys, the best I can' and he said, 'You don't look like you were a miner, how come you here' and I said, 'Just simply because I needed a job, and needed the money, that is all I can tell you.' And they said, 'If you have anything here you get it and get out of here', and I said, 'Man, I don't want to go out through that big crowd, they are liable to hurt a fellow,' but I said, 'We are going just as soon as the automobiles come up from Fort Smith after us,' and they said, 'That is all right if you go then, but you be sure that you go, and when you go don't come back here again,' and they said, 'If we ever catch you back here again, you will be in danger, and you are liable to get killed,' and I said, 'I will never be back, I am leaving.'
828 Q. Who were the men that were talking to you?
A. Well, I didn't know the men.
Q. Were they men that were employed there at the mine, or men that had come there in the crowd?
A. No, one of them had a badge on his coat, city marshal, or constable, from Hartford, and the other fellow was a sandy complexioned fellow, kind of curly red hair.
Q. Do you know his name?
A. Well, I have heard. I have been told since that his name was Howard.
Q. Howard? A. Yes, sir.
Q. What became of you then, Mr. Caldwell?
A. I came in to Fort Smith.
Q. Did you go back down there any more?
A. Yes, sir.
Q. When did you go back? A. The 29th of April.
Q. In the employ of the company? A. Yes, sir.
Q. As a guard?
A. No, I was not guarding, I taken some men down there.
Q. Taken some men down? A. Yes, sir.
Q. Do you know Charlie Robinson? A. Yes, sir.
829 Q. Did you have any conversation or talk with him at any time, in taking these men down, or hear him make any statement with reference to that trouble?

A. Why, I talked with him here, I was a witness here in the trial for the injunction.

Q. State what was said here.

A. I had a talk with him here in the court room, and that is one reason I went back, he told me there would be no danger until they went to hoisting coal.

Q. He told you there would not be any danger until they went to hoisting coal? A. Yes, sir.

Q. What did he say, if anything, would happen when they went to hoisting coal?

A. He said the place would be tore up, and that 'You had better be down in Mexico in the army, you will be safer than in Prairie Creek.'

Q. When was that, Mr. Caldwell?

A. When he told me that?

Q. Yes. A. That was about the 5th of May.

Q. That was during the hearing on the injunction proceeding? A. Yes, sir.

Q. You were a witness on the injunction proceeding?

A. Yes, sir.

Q. And Robinson was one of the defendants in the injunction suit, was he not?

830 A. Yes, sir, he said he was.

Q. And a union miner? A. Yes, sir.

Q. What else did Robinson say, if anything?

A. Well, he told me that if he was me he would not go back down there, he said you are not a miner, you say you are not, and he says—I told him the reason that I went, that I needed the money, and was out of a job, and he says, 'If you will not go back down there, and you don't get a job, or get up against it in any way, if you will write me (and he wrote me his name, and address on a piece of paper) I will help you.' He said, 'I have a whole lot of influence down there,' he said that he was secretary, or had been secretary of the local.

Q. Do you recall anything else he said in that conversation relating to the trouble that might be there when they went to hoisting coal, anything else?

A. Only he said that the place would be tore up, and I had better not be there. He said, 'You will be safer, you had better go join the army, you would be safer in Mexico in the army.'

Q. Did he refer to any trouble in any other state?

A. Yes, sir.

Q. What did he say?

A. He said, 'You know what they done in Colorado,' and he says, 'The same thing will be done here.'

Q. What is your age, Mr. Caldwell? A. 41 years old."

Mr. Warrum (reading): "Cross Examination

831 Q. Mr. Caldwell, you were commonly known as Slim down at the mine, were you? A. I don't know.

Q. They called you that around there, didn't they?

A. That fellow that came up there called me Slim.

Q. And other people called you Slim there, too, didn't they? A. Not that I know of.

Q. You spoke about your extended conversation with Charley Robinson—Uncle Charley is dead, isn't he?

A. I don't know.

Q. You do not know whether he is dead or alive?

A. No, sir.

Q. Were you so situated there you could see the crowd assemble around the school house? A. Yes.

Q. How long did you stand there and look at them?

A. I stood there and looked at them until they came up there.

Q. Could you tell about how many was in that crowd?

A. No, sir, I could not tell.

Q. What is your best estimate? Just estimate it.

A. It looked like there was 700 or 800 men all around from the school house clear around.

Q. Seven or eight hundred men? A. Yes, sir.

Q. How many women was in that crowd?

A. I don't know.

Q. A large number of women was in that crowd, wasn't there?

A. I don't know whether there was any women at all
832 in it or not. There was some women up close to me.

Q. You saw women around the school house in the crowd, didn't you?

A. I don't remember whether I seen any women. There was people there. A big bunch of them, all bunched up together.

Q. You saw some children in that crowd, too, didn't you?

A. No, sir, I [dont] believe I did, if I did I [dont] remember. I never noticed them.

Q. You won't say there were no women there in that crowd, will you? A. No.

Q. And you [wont] say there were no children there, will you? A. No.

Q. And to your best recollection there were about 750 men in the crowd?

A. I don't know. There might have been boys and children, I [dont] know, just looking over a crowd that way, by my estimate.

Q. The entire crowd you would say was about 750, in your estimation? A. Yes, it might be more or less.

Q. How long did they stay around the school house before they came to where you were?

A. From the time I saw them?

Q. From the time you first discovered them?

A. It was not long until they came up there.

Q. You were asleep, I believe, and you were wakened by the noise of the band playing? A. Yes.

Q. And you looked out and saw them? A. Yes.

833 Q. And then pretty soon they came down to where you were?

A. Yes, sir. They came to the mine first, and had to come through the ropes that were stretched around the mine, and then had to come around where I was up on a hill.

Q. Did you know a little girl named Johnson down there?

A. No, sir.

Q. Do you remember the incident of the little girl asking you about her cow, that she had gotten within the enclosure of the Bache-Denman people?

A. No, sir, I don't believe I do.

Q. You don't remember? A. No."

The Court: Proceed.

Mr. Drinker: From the United Mine Workers' Journal of April 16th, 1914, page 1, column 5.

Mr. Warrum: To this offer the defendants separately object because it is hearsay, and because under the opinion and ruling of the Supreme Court these communications and articles in the Mine Workers Journal are not binding, and do not tend to throw any light upon the contention of the plaintiffs on any issue.

The Court: I will let it in.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Mr. Drinker (reading): "Arkansas Miners Determined. Demand Union Conditions.

Ft. Smith, Ark., April 7th,

834 Unionists today have frustrated an attempt of the officials of the Bache-Denman Coal Company's mine, at Midland, near here, to strangle their organization and

operate under an 'Open Shop' policy. Previous to this decision 200 union men had been employed.

The miners met about a mile from the Mammoth Vein Mine, as the mine is known, and held meetings. They were addressed by a number of speakers, including Miss Freda Hogan, daughter of Daniel Hogan, a prominent Socialist. Following the meeting the men formed in line and marched to the mine.

Several clashes marked the efforts of the unionists to persuade the men in the mine to join them. Following a disturbance in which two guards were hurt, the miners joined the unionists and left the pit. A United States flag was then hoisted from a nearby pole and the crowd departed.

835 The company has announced its determination to inaugurate the 'Open Shop' policy at its six mines in Western Arkansas and eastern Oklahoma next fall. At present they are closed for the summer."

Mr. Drinker: We offer the testimony of ENGLISH DOUGHERTY, found on page 1280 of the record.

Mr. Hardin (reading):

"Q. What is your full name, Mr. Dougherty?

A. English Dougherty.

Q. Now, you must talk up so that the last juryman here can hear you, and so that the lawyers for the defendant can hear you.

A. I am a pretty low talker; I have rather sort of a wheezy in my throat, anyway. You try to talk a little loud to me, because I am a little hard of hearing.

Q. How old are you?

A. I will be, I guess, 69 years old."

Mr. Drinker: Mr. Warrum just informs me that Mr. Dougherty is here. Is he here in the court room?

Mr. McLachlan: He was at the Hotel Main today at noon.

Mr. Drinker: Have you seen any more of these Tennessee people? Do you know Thomas?

We will offer the deposition of EWINGS THOMAS, found on page 1261 of the former record.

Mr. Hardin (reading):

"Q. What is your full name? A. Ewings Thomas,

Q. Where do you live?

A. Near Tazewell. Straight Creek Zinc Mines.
Q. What are you working at now?
A. Straight Creek Zinc Mines.
836 Q. How old are you? A. About 52.
Q. Where were you working in the spring of 1914?
A. Tennessee Coal Company.
Q. Where? A. Briceville.
Q. At that time did a man come to see you about going to work at Arkansas? A. Yes, sir.
Q. What was his name?
A. Eustis, I believe they called him.
Q. What did he say to get you to go to Arkansas?
A. Place out there that wanted men, a nice place to work, something like that.
Q. What did he tell you about conditions there?
A. Running open shop mines but they had no injunction there and it was perfectly peaceable and quiet.
Q. That it was a union or non-union country?
A. A Union country.
Q. Did he get any other men besides you to go?
A. Yes, sir, three others.
Q. Who?
A. Sam Thomas, Archy Brag and Charlie Suttles.
Q. Then when did you go from Briceville, what month?
A. Along about June sometime, I don't remember the day.
Q. Remember when you got to Prairie Creek, what date it was? A. About the 10th, I believe.
Q. How did you find things there?
837 A. Found them just like Mr. Eustic represented it.
Q. Any trouble there?
A. Not any when we went, peaceable and quiet.
Q. How long did you stay? A. Three weeks.
Q. What did you come home for? A. After my family.
Q. What was your idea?
A. I wanted to go I thought it was a good place to work, liked the company and the situation.
Q. When you came back here did you get any other men to go back with you?
A. Came several to me after I came back, come to my home in Coal Creek and I told them how the thing was and they said, I want to go back with you.
Q. Did any other men go back with you?
A. Yes, some several.
Q. What did you tell them about conditions at Prairie Creek?
A. I told them that it was union people's country in there and had an injunction against that place and that they was

guarding it, and they said they didn't care for that, they would go away, I told them I didn't think there would be any trouble there whatever.

Q. How many went back with you?

A. There was John Martin, Mr. Dougherty and his son, Tom Saunders and his wife, old preacher Johnson, Tom Perry and his family and my family.

838 Q. What did your family consist of? A. Four.

Q. Who?

A. Me and my son and wife and little daughter.

Q. What is your son's name? A. William.

Q. How old is he? A. 19.

Q. How? A. Yes, sir.

Q. Who was Tom Perry, any relation to you?

A. Yes, him and my wife first cousins.

Q. Any relation to your daughter?

A. Married my daughter.

Q How many children had he? A Three.

Q Your daughter go with him? A Yes, sir.

Q Mrs. Tom Perry? A Yes, sir.

Q When did you get to Prairie Creek the second time you went? A On Friday, I believe it were.

Q How long before the battle, how many weeks?

A Not [quiet] a week. About one week.

Q You know what day of the month the battle happened on?

A No, sir, I do not.

Q You say you got there a week before the battle?

A Yes, I believe it was on Friday, it took place next Friday.

839 Q Where did you go to when you got there?

A No. 3 on the hill.

Q You know what the camp was called where you lived?

A I can't speak it.

Q Where was it as to the No. 3 tipple and fan house?

A Up on the hill near what they called the fan house, closet house to the fan house.

Q What other thing [—] they call the fan house?

A Never heard it called anything but fan house.

Q Between the time you got there and the battle, any trouble? A No, sir, never heard [—] any.

Q What were you doing there for the company?

A Working at the boarding house.

Q What were you doing?

A Running a boarding house for the company.

Q Did you go, ever go to Frog Town with a gun?

A No, sir.

Q Ever do any shooting there? A No, sir.
Q Ever hear of any of the other company employes doing such a thing?
A No, sir, never heard them say anything about such a thing.
Q When was the first shooting you heard at the time of the trouble?
A On Thursday night about three or four o'clock.
Q Afternoon or morning? A In the morning.
Q Thursday morning? A [—].
840 Q What did you hear and how did you happen to hear it?
A My daughter heard it and got up and waked me up and I got up and went to the door and listened.
Q What was it? A Shooting of guns of some sort.
Q What direction?
A From the north, the way I thought it was, my wife got frightened and took my attention to her, but thought they came from the north.
Q Then what did you do?
A I went back and put on my shoes and finished dressing as quick as I could.
Q Did your wife get up? A No, sir.
Q Your daughter? A Yes, sir.
Q That was Mrs. Perry? A Yes, sir.
Q Then what did you do after that?
A I went down to the camp and got to the fan house.
Q What time was that?
A Between seven and eight o'clock. Seven o'clock when I got to the fan house.
Q Have any breakfast? A Yes, sir.
Q What time? A About six o'clock.
841 Q When [you] was the next shooting you heard?
A Took place about seven or little after seven.
Q Where were you then? A Fan house.
Q What did you go there for?
A To relieve old man Dougherty, the guard.
Q Anybody there?
A Yes, some [follows] there, his son guarded that night. but another fellow [—] there when I got there.
Q Have any gun with you?
A No, sir, didn't take any gun with me, one there.
Q Where did Dougherty go when you got there?
A I don't know.
Q Go away from there? A Yes, sir.
Q. Who was there with you? A. Didn't know his name.
Q What was he doing there? A Guarding.

Q How long did you stay there?
A I stayed about five minutes I guess and they blowed a whistle and I says to him, 'My notion is trouble has took place this morning.'
Q Then what did you hear?
A I was setting there and heard a shot around the corner and I said,—Was not more than a breath until the shooting over in the camp began.
842 Q What camp? A No. 3.
Q Where did it come from?
A Every direction it appeared like to me, couldn't tell.
Q You got out?
A Yes, sir. Looking for my son and daughter.
Q What did you see? A Lot of men?
Q What men? A Union men I reckon.
Q Men that were working with the company? A No, sir.
Q Where were those you saw? A Back of the camp there.
Q Moving?
A Some of them walking about and some not.
Q Which way were they coming? A Right that way.
Q Which direction, toward you or away from you?
A Around the camps, back of the camps.
Q Did they have guns, any of them? A Yes, sir.
Q How far away were they?
A A quarter of a mile, I guess, I could see them.
Q You see any of them shoot?
A I couldn't tell if they were shooting or not.
Q Where were they shooting from?
843 A Shooting from that direction, appeared like.
Q Anybody shooting from the camp?
A Don't know, didn't pay any attention.
Q Where did you go then?
A I went home to my wife and family.
Q You find your wife?
A I found my wife laying on the floor, face on the floor?
[A] What was the matter with her? A Scared.
Q Who else was there?
A Just little girls with her, three little girls.
Q Who were they? A Daughter's little girl and my own.
Q You said three?
A We got two there, little girls at my house.
Q Was that all the people there?
A That's all was there with her.
Q How long before anybody else came?
A A short time before my son and daughter came.
Q Which way did they come?

A From [my] the boarding house, my son was working in the boarding house and she went down to see about her man and him.

Q Then what did you do?

A I taken my wife, carried her to the back of a knob from the mines went in back of a knob to keep from being killed, my wife got sick on the way and I laid her down a time or two thought she was dying.

844 Q Who all went with you there?

A Old man Dougherty and his son, old man Johnson—

Q Go along with you or come after you?

A Went right along, and another man, I don't know his name and his family, Tom Perry's wife and her children, I don't know [—] many there was, didn't count them.

Q What time was it when you got there?

A Between eight and nine o'clock, from eight thirty somewhere along there.

Q Had you looked out when you were at your house to look over the country before you started? A Yes, sir.

Q What did you see?

A Big lot of men down there and I got away as quick as I could, might some of them get killed, my wife was scared in a manner to death and I wanted to get her out.

Q See any fire? A Yes, lots of it.

Q Where?

A Tip house and another house burning, dwelling house.

Q Where?

A I forgot the name of the mine, I was no further down than where I was living.

Q What mine was it you saw the fire?

A I don't know, No. 4 or what it was, scattered all around, they said the mine belonged to that company. I know this fire was burning I saw it.

845 Q You ever seen a mine over there when you saw the fire? A No, sir.

Q See a tipple? A Yes, seen it burning down.

Q Did you see any fire on the tipple?

A Seen the fire burning it down.

Q When you passed did you see that?

A As they carried us out we went by there, taken us away down the mountain.

Q I am talking about before you went on the bluff, see any fire on the tipple then? A No, sir.

Q When you were on the bluff where you went with these people, were you where you could see over the country?

A Yes, over that way.

Q Were you where the shooting could hit you coming that way? No, sir.
Q Why not? A Bluff, under the bluff.
Q How long did you stay there?
A Went about eight or eight thirty and stayed until eleven or about.
Q How [do] did you know?
A Didn't know exactly, it was something right along there.
Q Then where did you go next and how come you to go there, how come you to move?
A [There and] the children commenced to cry for water and I made up my mind to go after water if I got killed—
846 Did any one come along there?
A Yes, some of the union men come around.
Q Have guns? A Yes, sir.
Q You know any of them? A No, sir.
Q Know any or either of them? A No, sir.
Q What did they do? When was the first time you saw them?
A Setting there and turned my head and seen them come out the hill.
Q What did you do when you saw them coming?
A Got up and walked right up to them.
Q What did they do?
A Run backward and one went one way and the other the other way and one throwed his gun down on me and the other one said, 'don't shoot that man' and he throwed his gun up and stopped, I said, 'men, I don't aim to interrupt you no way, we just want to talk to you.'
Q What did they do then?
A Come to where I was and I told them and they said to get your crowd and we will pilot you out of here and I got my wife and went out down the ridge.
Q Who went with you? A Whole crowd.
Q Where did these two men go?
A Right on with us and got to spring and turned us over to some more.
847 Any marks on them? A White handkerchiefs.
Q Which arm?
A This arm (pointing to his left arm).
Q Where did you go from the bluff?
A Down the ridge and come to a place down there and they were shooting so heavy made us stop and set down until the shooting ceased.
Q See any men as you went along? A Yes, lots.

Q Men working for the company? A No, sir.
Q Have guns? A Yes, sir.
Q What were they doing?
A Running back and forward first one place and then another around the camp there.
Q See any of the shooting? A No, sir, nary shot.
Q Where did you get to from there?
A Went to a little spring and got some water.
Q Meet anybody at the spring?
A Yes, hundred or more there.
Q What were they doing?
A There ourselves to get water and some come the way the trouble was.
Q Have guns with them?
A Yes, some of them did and some didn't.
848 Q What kind?
A All kinds, high power guns and some others.
Q What kind of guns [—] those have that came on the bluff?
A They had that long range gun and the other shot gun.
Q Any arms with them? A Never seen them.
Q These men at the spring have marks on them?
A Some.
Q What? A White handkerchiefs.
Q You say that when you got to the spring they turned you over to some others? A Yes, sir.
Q Know them? A No, sir.
Q Know their names?
A No, sir, not acquainted with any of them in there.
Q Have guns? A Yes, sir.
Q What happened at the spring if anything?
A Some man with us had on mine clothes and one man said, 'I will give you a chance for your life when the other crowd gets here they will kill you' and he pointed his finger at a big tree on the ridge, 'you see that there, you hit this corn field and get away from here as quick as you can, and don't look back,' that's what he said.
Q What did the man do?
A Trotted off and got away, left his wife and children.
849 Q Ever see him any more? A No, sir.
Q What happened then?
A Went down and put the women and children in a hack, and took this hack.
Q What hack?
A Deputy Sheriff's, said he was a Baptist preacher, then we went on down and they took us to a hotel.

Q You got in the hack?
A No, sir, walked along the side.
Q Who got in? A Women and children.
Q Anybody go along with you?
A Yes, followed along a crowd, several.
Q When you were coming along from the bluff to the spring, see any horses? A Mules.
Q What a doing?
A Carrying ammunition, fellow asking if they had plenty of ammunition.
Q Who did? A Fellow on the mules.
Q How many did you see?
A Five or six I reckon.
Q All on one mule? A No, sir, scattered.
Q What were the men doing that had the mules?
850 A. Said they had ammunition on there.
Q. See any ammunition there? A. Some in sacks.
Q. What were they doing with the sacks?
A. Asking the fellows if they had plenty of ammunition.
Q. See them get any out of the sacks?
A. No, sir, I didn't.
Q. When you went along the road, when you got the hack, where did you go? A. Hartford.
Q. Meet any people on the road to Hartford?
A. Yes, sir.
Q. People you met men or women? A. Yes.
Q. People you met men or women? A. Both.
Q. Any more men with guns? A. Yes, sir.
Q. How many? A. Several.
Q. You see any more men with marks on them?
A. Yes, sir.
Q. What kind? A. White handkerchiefs.
Q. How long did it take you to get to Hartford?
A. I don't know, had to drive slow.
Q. What time was it when you got there?
A. I guess between one and two o'clock.
851 Q. Where did you go when you got there?
A. To a hotel, upstairs in a room my family, the rest downstairs.
Q. Who went with you?
A. I don't know who he was, man that claimed to be a deputy sheriff and a preacher, don't know his name.
Q. Did any of the other men that went along come?
A. Yes, sir.
Q. Say several come to see you? A. Yes, sir.
Q. Anything happen when you were up there?

A. Kept coming up there and I went and spoke to keep them down frightened my wife and the man stopped some from coming, come a woman up there, an old woman and she said she was sorry—'I am sorry for these little children but these scab women and men couldn't come in my house if it was raining hail stones as big as salt barrels.'

Q. Anybody else come?

A. Yes, come a lady, nice lady treated my wife very nice and kind.

Q. How long did you stay there? A. All night there.

Q. Where did you go from there?

A. Taken us across on the corner to an old long store house, taken us across there.

Q. They bring you food there?

A. Yes, plenty to eat there.

Q. How long did you stay there?

A. Until Sunday morning.

Q. How many rooms for the crowd?

852 A. One long store house.

Q. What happened on Sunday?

A. Bought our tickets, the Mayor of the town they said and sent us back to Coal Creek.

Q. Anybody say why they sent you back to Coal Creek?

A. Wanted to get us out of the town, wanted to get us away from there as quick as possible.

Q. You know he was mayor?

A. No, sir, just what they said.

Q. Where did you go from there? A. To Coal Creek.

Q. Was your daughter there with you all the time from the time you got to Hartford?

A. Yes, stayed right there, went back in the camp that night after her things.

Q. Who went with her?

A. Two officers, said they were.

Q. Walk back? A. Two two horse wagons.

Q. Say why she went?

A. After our things that was in the house, our trunks.

Q. Bring them back?

A. Yes, trunks and load of the household stuff.

Q. What was in the trunks?

A. Was not much, everything that was in them that was worth anything had been taken out.

Q. Don't know who took it out?

A. No, sir, don't know that.

853 Q. Did you say Mrs. Perry went that Friday night or next day? A. Friday night.

A. The day of the battle? A. Yes, sir.
Q. Ever been back in that country since that?
A. No, sir.
Q. Describe to us as best you can this man they said was mayor?
A. Slim man, spare made man.
Q. Any mustache or whiskers?
A. Seems like black mustache.
[A.] Tall or short? A. Tolerable tall.
Q. Describe as best you can the two men that met you at the spring?
A. One was a big tall fellow best of my recollection he was red headed, the other I don't remember how he looked.
Q. What kind of looking fellows were they that come to you on the bluff?
A. One big square fellow and the other a small fellow with black mustache."

854 Mr. Grant: I will read the cross-examination.

"Q. Did you know any of the employees working at the mines where you were running a boarding house?
A. I knowed a few of them.
Q. You see any of them that day except the two you mentioned as being at the fan house on the morning of the trouble? A. No, sir.
Q. How many of the employees you acquainted with?
A. Well, there was some six or eight I reckon.
Q. How many did they have there at that time in all?
A. I couldn't tell you how many was there in all.
Q. Big crowd?
A. Not so powerful many, several too, never counted them.
Q. 75 to 100? A. Somewhere along there in all.
Q. Out of that number you knew about eight?
A. I didn't pay any attention, didn't inquire their names and get acquainted, not been there long enough.
Q. The two men you referred to as meeting you at the bluff you don't know who they were? A. No, sir.
Q. Never saw them before?
A. No, sir, not that I know of.
Q. Then you don't know if they were union men or non-union men? A. No, sir, couldn't say.
Q. Don't know if they lived in that community or in Oklahoma or where?
855 A. Couldn't tell you where they were from.
Q. You know Preacher Stroupe? A. No, sir.

Q. You say a preacher [carred] you into Hartford?
A. Said he was a preacher.
Q. He was a tall fellow? A. Yes, sir.
Q. Red complected man? A. Yes, sir.
Q. Said he was a preacher? A. Yes, sir.
Q. Took your family in a wagon and took them to Hartford? A. Yes, sir.
Q. Cared for you and bought your ticket and you come back to Coal Creek? A. That's what they done.
Q. You met no one that you knew? A. No, sir.
Q. The entire route? A. No, sir.
Q. What time did you get up that morning?
A. About three o'clock.
Q. Then when the shooting began?
A. Yes, between three and four o'clock.
Q. Dark then wasn't it?
A. Tolerable dark, see a little distance.
Q. Could you see well enough to tell a man from anything else 200 yards away? A. No, sir, not then.
856 Q. Could you tell a white man from a negro?
A. No, sir, don't believe I could at that time.
Q. Tell him 50 yards?
A. I don't know if I could or not.
Q. No moon shining that morning?
A. Don't think they were.
Q. You say you went from the fan house back to your own house between seven and eight o'clock?
A. Yes, sir.
Q. Now before you left the fan house did the shooting commence again?
A. Yes, commenced before I left the fan house.
Q. You then went back to your home? A. Yes, sir.
Q. And took your family and others mentioned and went back behind the hill? A. Yes, sir.
Q. That east or north of the mines where you were located? A. Kind of east I should think.
Q. Before you left the fan house were any shots coming in around the fan house, shooting at you?
A. Then they were coming in the camp and shooting was, I don't know which way it was ranging.
Q. You say coming in the camp, how do you know around you and you were nearly a quarter of a mile from
857 where the shooting was going on, how do you know shooting into the camp?
A. Don't know exactly, from the noise though it was coming into the camp.

Q. Was down there where the tip is located.
A. Good deal and from other direction too.
Q. Great deal of the shooting being done where the tipple is located? A. Some of it.
Q. If you hear a gun fired on a hill quarter of a mile off can you tell from the sound of the gun which way they are shooting? A. No, sir.
Q. Then you don't mean to say they were shooting into the camp? A. I meant just what I said.
Q. Either answer the question or not just as you like. Can you tell from the sound of a gun what direction the party shooting the gun is shooting?
A. I have not answered it, have I? I want a man to talk to me like I am a man and not a dog. No, of course, I couldn't.
Q. What time was it when you started into the town of Hartford from the spring you referred to?
A. Was about twelve o'clock I reckon.
Q. You spoke in your examination in chief about some fire that was burning there? A. Yes, seed the fire burning.
Q. When?
A. As we went down to Hartford before we came to the spring.
Q. At what point was the fire?
858 A. In the north from where we were.
Q. You know what it was burning at that time?
A. Tip house and dwelling house.
Q. Tipple? A. Yes, sir.
Q. How many tipples? A. I just seen one.
Q. Which one?
A. I don't know the number, the name of it, not acquainted there.
Q. That the tipple at the mines down below the fan house?
A. No, sir, toward Hartford.
Q. Further down? A. Yes, sir.
Q. Don't know the name of it? A. No, sir.
Q. Did you see any one from the mines that day, those who were employed at the mines?
A. I seed none, only the men with me.
Q. Only the men you mentioned at the fan house?
A. Yes, sir.
Q. You meet any others you didn't know? A. Yes, sir.
Q. And you didn't know them? A. No, sir.

Q. Outside of the seven or eight you have mentioned you would not have known any of the others if you had met them? A. No, sir.

859 Q. How many were in the wagon that carried you people into Hartford?

A. I don't know, several women and children there, don't know how many children. Don't know how many children.

Q. Meet women and children all along?

A. Yes, women along the road and children too.

Q. Great many people along that road that day?

A. Yes, several.

Q. Way onout until you struck the spring?

A. Yes, lots of them.

Q. Were they going out toward where the trouble was going on a lot of them?

A. Yes, some that way and some back from there, some one way and some another.

Q. Some a foot? A. Yes, and in buggies and horseback.

Q. Some in autos? A. Yes, some in autos.

Q. The preacher—the man that said he was a preacher, had a gun in his wagon? A. Yes, sir.

Q. After you reached Hartford you did not go back to the scene of the difficulty, if there was one? A. No, sir.

Q. What occurred out there that day you don't know anything about except what you have testified to?

A. No, sir.

860 Q. If there was a fight you don't know who engaged in it? A. No, sir.

Q. Were you ever at either one of the mines?

A. No. 3, I believe it was No. 3.

Q. Went to one of them?

A. I never went around there, wasn't there long.

Q. How many were boarding at your boarding house, employees of the company?

A. All of them eat there, I don't know, just about all.

Q. That was the principal boarding house and the only boarding house conducted at that place?

A. Yes, all I knowed anything about.

Q. Mr. Drinker asked you particularly about your trip back to Tennessee, after you first went to Prairie Creek, Arkansas, and also what you said to people about going out there, why is it you are so particular about placing in the record that you told about the strike and the trouble they had? A. Not particular about telling it.

Q. You know why it is that Mr. Drinker is so careful to prove you told them all about the difficulty out there?

A. Well, I told them just how things were and explained I didn't misrepresent things no way, told them just as it was there.

Q. I ask you this question, if you are now advised why it is that Mr. Drinker, counsel for the coal company is so particular to show by you that you told all the parties that you talked with about the matter just the conditions existing at Prairie Creek? Know why he asked those things?

861 A. Wanted me to tell just as it was, I suppose, that's I understood it.

Q. Don't know?

A. I can't read his mind, I can't tell nothing about what he meant, I don't know what he meant.

Q. He talk with you about it being a violation of the law to take men from one state to another, and about bringing them into Arkansas under the circumstances such as existed at Prairie Creek, Arkansas, on the dates referred to?

A. I can't say I took them there, they will not say I took them there, I did not hunt out after them, they came to my house.

Q. They were seeking you?

A. Come to my house after I come back to find out how things were out there.

Q. Who paid your expenses back here?

A. Man there at Hartford said the corporation made up money, that's what they told me.

Q. I am not asking about your last trip back to Tennessee, you come back to Coal Creek and then returned to Arkansas after that, who paid your way back to Tennessee?

A. I paid it myself.

Q. Were you reimbursed?

A. I worked for the money and paid it myself.

Q. You came back to Coal Creek to get your family?

A. I did, paid my own money.

Q. Were you ever repaid that amount by anybody?

A. No, sir.

862 Q. Did you have a promise from any one to repay you? A. No, sir.

Q. Did the men go along back with you?

A. Yes, right back as I went.

Q. Who paid their way? A. I couldn't say.

Q. Who else was with you, came out here with you?

A. Nobody back with me."

Mr. Drinker: Is that all you were going to read?

Mr. Warrum: That is all we want to read at this time.

Mr. Drinker: We will read the rest of the cross-examination.

The Court: Very well.

Mr. Hardin: (Reading)

"Q. Now during the entire morning of the 17th of July you and your family that you have named and the other parties you have named were together all the morning?
A. Yes, sir.
Q. After you left and went on the hill? A. Yes, sir.
Q. Remain together during the entire day and up until Sunday morning? A. Yes, sir.
Q. You were furnished transportation by a man who said he was mayor of Hartford and came back to Coal Creek?
A. Yes, that is right.
Q. Did you say your son was with you that day?
863 A. Yes, sir.
Q. And was with you all the time from Friday morning until Sunday morning? A. Yes, sir.
Q. I did not get the relationship of Perry, he is your son-in-law? A. Yes, Tom.
Q. He with you? A. No, sir, not that morning.
Q. With you in Hartford?
A. No, sir, never seen him any more for three months, before he come in home.
Q. But his wife was along?
A. Yes, I brought her back with me.
Q. Is Tom Perry a coal digger?
A. No, sir, a laborer on the outside of the mines.
Q. At the time he left Coal Creek was he a laborer about the mines? A. Yes, sir.
Q. What company did he work for?
A. Tennessee Coal Company.
Q. Was your son a coal digger? A. No, sir.
Q. What was he doing at the time he left Coal Creek to go to Prairie Creek?
A. On the outside and timbers around the mine.
Q. How many was in the crowd that went back with you on the occasion discussed here about the fares, etc., on the second trip?
864 A. I established that once. Old man Dougherty and his son, John Martin, Jesse Grant—

Q. Was old man Dougherty and son coal diggers?
A. Yes, sir.
Q. Grant a coal digger? A. Yes, sir.
Q. Was he engaged in the business of digging coal at the time he left here?
A. No, sir, not doing anything, not any of them doing anything, work was dull here.
Q. How many coal diggers in the crowd that went there, that pursued that occupation?
A. Men say they are coal diggers, when they can't do much at it, all claimed to be coal diggers, Dougherty and his son, Jesse Grant and John Martin I believe they about all claimed to be coal diggers like.
Q. The other people they worked at any kind of employment they could get? A. Yes, sir.
Q. Not been working around the mines?
A. Some had and some had not.
Q. Those who had, outside of those claiming to be coal diggers, did work on top?
A. Yes, on the outside, didn't go in the mines to work.
Q. You were conducting a boarding house out there?
A. Yes, sir.
Q. What time did you say you got down to the fan
865 house that morning? A. About seven o'clock.
Q. You had breakfast, I believe you say, at six?
A. Yes, sir.
Q. Your family over there?
A. Over there at home, except my son he stayed at the boarding house every night.
Q. You take your meals at the boarding house or at home?
A. Home. Fixed up a day or two before that to take them at home. I fixed to take them at home, straightened up just a few days before this trouble came up.
Q. You acquainted with Sam Thomas?
A. Yes, sir.
Q. He related to you? A. No, sir.
Q. How long have you known him?
A. Got acquainted with him awhile before I went out there.
Q. Where? A. Cambra Coal Mines.
Q. You know where he was from originally?
A. No, sir, do not.
Q. Any of those women have guns you met on the road?
A. Never seen a woman with a gun.
Q. How many guns did you see? A. Couldn't tell.
Q. Give some idea.

A. I saw so many I can't tell a thing in the world
866 about that. I seen so many. I don't know. I can't tell you.

Q. The man who carried you in had an equal opportunity to see these things?

A. Ought to if he had eyes like I did.

Q. Didn't look blind, did he?

A. I don't think he was.

Q. The other people at the spring and on the road had an equal opportunity to see all these things that you did, didn't they? A. Yes, seems like they ought to have seen them.

Q. During the time you were at Prairie Creek did you get acquainted with a man named Rusty, commonly called Rusty? A. No, sir, not that I remember of.

Q. Don't remember a name of that kind? A. No, sir.

Q. Where does this man Dougherty live now at this time?

A. Slatestones mines or Tennessee Mines.

Q. How far from the town of Coal Creek?

A. Three and half or four miles up there.

Q. At what point did you get off the train when you got over to Prairie Creek, in that country where did you get off the train?

A. Got off at Fort Smith and got on the train and went down apiece and got off again.

Q. You met at the train? A. Don't know who he was.

Q. How many?

A. Two or three of them, don't know would not say for certain.

867 Q. Have wagons with them? A. One wagon.

Q. Have guns with them?

A. Yes, had some guns.

Q. Was some trouble at the train that afternoon you got down there?

A. Not that I know of, I don't remember any. I don't remember of hearing of it.

Q. You afterwards learn who met you on this occasion?

A. No, sir.

Q. Did you ever see them after that time?

A. Yes, I seed them but I never paid no attention to who they were or what their names were.

Q. Don't remember their names? A. No, sir.

Q. You know a man named Charles Cheek?

A. Yes, I know him.

A. Everybody was acquainted with Charles Cheek, wasn't they? A. In the camps, no, sir."

'Mr. Drinker: Now, I will omit from question 167 to question 171. (Reading):'

"Q. Mr. Drinker asked you on direct examination if you went to Frog Town at any time a few days prior to the trouble on the 17th of July, and if you shot into Frog Town?

A. No, sir, never was in Frog Town and never shot into Frog Town, never was [ower] there at all.

Q. There was some trouble over at Frog Town?

A. I don't know, Can't answer that. I don't know,
868 sir, if were or not.

Q. Four days before this shooting occurred on the 17th about which you testified, is it not a fact that one night about the hour of 10:30 o'clock that a difficulty occurred at what is known as Frog Town, a place between the mines where you stayed and Hartford, in which a great deal of shooting was done?

A. Don't remember it, don't remember hearing anything said about it that I remember of. Anything that I remember of.

Q. Didn't mix and mingle with those fellows much?

A. No, sir.

Q. Were you out in the neighborhood of this mine you speak of being on fire on Sunday before this difficulty on Friday?

A. No, sir, not outside the mine limits there the whole time I stayed there.

Q. Then if those guards stationed down there and employed at the mines went down there and shot up Frog Town you don't know anything about it?

A. No, sir, didn't know anything about it."

Mr. Hardin: I will also read the redirect examination.

"Q. When you got up that morning, when you said that your daughter, Mrs. Perry, called your attention to the shooting were you paying special attention to how light it was and how far you could see a man?

A. Well, no, didn't pay much attention.

Q. What were you paying attention to?

A. To the shooting.

Q. What were you doing?

869 A. My attention was to my women mostly.

Q. Did you see Charlie Suttles that morning before you went to the fan house? A. No, sir.

Q. You said in answer to Mr. Covington's question, you said that the corporation you understood paid the money to

get you from Hartford to Coal Creek, what corporation you mean? A. There at Hartford.

Q. Town of Hartford? A. Yes, sir.

Q. You said in answer to Mr. Covington's question that you didn't mix much with the fellows in Frog Town why didn't you?

A. Didn't have no cause to go there, didn't want to go.

Q. Why?

A. Simply from the reason they said if they catch us fellows out over there they would beat us up, the union fellows beat us up.

Q. Who said that?

A. Talked in the camps that they would beat us up if they caught us.

Q. Up on the bluff between nine o'clock and [evlen] you hear any loud report? A. Yes, sir.

Q. What time was that?

A. Don't know exactly from 9:30 or 10, I don't know.

Q. Did that sound like a rifle shot? A. No, sir.

870 Q. What sound like? A. Dynamite.

Q. What direction? A. North.

Q. What was in the north direction?

A. Fan house and such as that and the mines."

Mr. Drinker: Will you read the re-cross-examination?

Mr. Warrum: No.

Mr. Drinker: We will read it.

Mr. Hardin: (Reading)

"Q. Mr. Thomas, he asked you your reason for not going to Frog Town, you didn't even associate with the employees of the company? A. No, sir.

Q. Enough to know who they were, only those you knew here? A. Didn't pay much attention.

Q. All of the information you got there about the inclination of the citizens to beat you up was from the officers and employees of the company? A. No, sir, in camp.

Q. Didn't get that from any miners around there at all?

A. No, sir.

Q. And you don't know a single man in that section who belonged to the miners organization?

A. No, sir, don't believe I do."

Mr. Drinker: We now offer the testimony of J. CURTIS BOHANNON, beginning on page 1381 of the record.

Mr. Lucas: (Reading)

"Q. What is your full name?

871 A. J. Curtis Bohannan is my full name, my initials are J. B. Bohannan.

Q. Where do you live? A. Ft. Smith.

Q. Where are you working?

A. In the box factory.

Q. In the spring of 1914 did you go to work for the Bache-Denman Coal Company? A. Did I work for them?

Q. Yes. A. Yes, sir.

Q. Who hired you?

A. Well, Mr. Finley first spoke to me about going down there to work.

Q. What were you to do down there?

A. Mine guard.

Q. Who gave you your instructions?

A. John Shalen.

Q. What did he say to you?

A. He told me to watch about fire and one thing or another.

Q. Did he say anything about the use of guns?

A. About which?

Q. About the use of a gun?

A. No, sir, he never told me. He gave me a gun but never told me anything about using it.

Q. You went to the Midland station one day with

872 Jackson and Epperson, didn't you? A. Yes, sir.

Q. Do you remember that day? A. Yes, sir.

Q. Do you remember when that was?

A. Not exactly, it has been so long ago I can't call just when it was to mind. It was sometime along in June, I think it was.

Q. In June, 1914? A. Yes, sir.

Q. State what occurred at the Midland station that day.

A. Well, do you mean the Midland station or Burma?

Q. This was at the Midland station?

A. We went there to get on the train to go home to Ft. Smith to see our folks, and a lot of fellows gathered up there and rocked us.

Q. They threw rocks at you?

A. Yes, sir, I don't know who they were, but there was a bunch of boys around the depot to get on the train and they rocked us.

Q. What did they say to you?

A. They cussed us and abused us around.

Q. Did they call you any names?

A. "Dam scabs" or something like that.

Q. Were you struck by a rock?

A. Yes, sir, a rock struck me up here (Indicating) as I went to get on the train.

Q. Do you remember some trouble you had at the Burma station?

A. Yes, sir, one evening I went to get on the train.

Q. What month was that?

873 A. The last of June or the first of July.

Q. How far was Burma from Mine No. 4?

A. About a mile apart, I guess they are.

Q. Why did you go to get on the train at Burma?

A. There was trouble if we went to get on the train at the other place, and we thought we would go down to that station and not have any trouble if we could possibly get around it, and we walked off down the railroad from the station to wait for the train, and we were there for a half an hour or more, and we sat on the road talking, and they began to bunch up at the depot and I said, "Boys, we will have to get away from here, they ain't going to let us get on the train." And about that time they hollered "Go after them." There was a whole bunch of them, about 100 or 150 yards away, and there was a bunch of them hollering at us and abusing us and we lit out.

Q. Do you remember, during the month of June, while you were guarding there, seeing one of the parties passing by there a good many times, going back and forth, with a gun, a union man?

A. Oh, yes, they were passing daily.

Q. Was there one man whom you knew?

A. I could not say, I could not call to mind. I was not acquainted much down there, I could not say yes, There was one man in particular I noticed that I knew, that was Clint Burris. I knew him.

Q. State what he did?

A. He was passed along and every once in a while I was at the pump station guarding that, he would pass by

874 going up the hill there, and he had a gun in his hand, but he didn't say nothing, and no one said nothing.

Q. Did that happen once or frequently? A. What?

Q. Did that happen once or frequently?

A. Several times while I was guarding at that place he passed, but he never said anything."

Mr. Warrum: No cross-examination.

875 Mr. Drinker: We would like to recall Mr. Hanraty.

The Court: Very well.

PETE HANRATY, having been previously sworn and testified, was recalled for further examination in behalf of plaintiffs and testified further as follows:

Direct Examination

By Mr. Drinker:

Q. Mr. Hanraty, have you heard the testimony of the last three witnesses? A. Yes, sir.

Q. Now, state whether or not a strike involving the question that this strike was over, as testified by the witnesses, and carried on in the manner described, is a local strike or not?

Mr. Warrum: Now, just a moment. If the court pleases, they have read from the record that was before the Supreme Court.

The Court: Make your objection.

Mr. Warrum: The defendants separately object to the question asked for the reason that it is an attempt to draw from this witness a conclusion as to the effect of evidence that has been passed upon by the Supreme Court.

The Court: This is a new trial of the controversy. I have been looking into these questions when I have had the opportunity, as well as the constitutions of these concerns. They define what is a general strike and a local strike, and it seems to me it is not a question of expert testimony.

Mr. Drinker: Will your Honor hear me on that.

The Court: No, I will not.

876 Mr. Drinker: May I just say one word, your Honor?

Will you pardon me for ten minutes, to call one thing to your attention?

The Court: Very well.

Mr. Drinker: The only relevancy or question to which this testimony relates is the liability of the National Union. As your Honor stated, that is a question which your Honor can take care of at the close of the trial. I want very respectfully to suggest that, in order that we might make a record, that the witness possibly might be allowed to answer three questions which your Honor can control at the end of the trial or strike out, as your Honor sees fit, but we will have a

record which can be ruled on by the appellant court, if necessary.

The Court: Of course, you are interested in the trial of one side of the case. The court must be interested in the trial for both sides. No matter what brought about this situation, if it was brought about by local men, it could not be the kind of a strike, or whatever it was, war, or what not that would bind the general organization, because whatever was done was done without any power from the organization. The organization could only be bound by those who have the power to bind it.

Mr. Drinker: This is such a vital point—

The Court: You can make your offer.

Mr. Drinker: I would deem it a great favor if your Honor would allow me to address you on this question, because this is a very vital point. There are three or four high spots in connection with our proof against the National organization, and this is one of them. It is a very brief proposition,
877 but I submit very respectfully to your Honor that I have not had a chance to present my view on this question.

The Court: I think I understand it.

Mr. Drinker: With the greatest respect to your Honor, I am afraid you do not.

The Court: I do not think there is any danger of it. I have no apprehension at all that I do not understand what is intended by this, and I do not have any apprehension at all that I do not understand the rules of law governing it.

Mr. Drinker: If your Honor will permit me to state, with the greatest respect—

The Court: I have ruled.

To which ruling and action of the court the [plaintiss] and each of them at the time duly excepted and still except.

Mr. Drinker: May I make an offer.

The Court: Yes.

Mr. Drinker: I offer to prove by the witness on the stand that the term "local strike" is a term which has a peculiar significance among the miners organization, well understood by them; that it refers to a strike which involves the inter-

pretation of the contract between the miners and the operators; that the term does not apply to a strike which is directed against an open shop attempt by a former union operator in a union field, for the reason that such a strike as that involves not merely the locality where the particular mine operates, but the other districts and the entire National organization, because such an operation, if allowed to go on without opposition or suppression by the Miners
878 Union, would inevitably spread first to the adjoining union mines, and then to the other union mines, to the adjoining districts, and ultimately to the entire National organization.

I further offer to prove by this witness—

The Court: Make your offers one at a time.

Mr. Drinker: That is my first offer.

The Court: What do you say.

Mr. Warrum: The defendants separately object to the offer, on the ground that it calls for the opinion of this witness as to what constitutes a local strike, under the circumstances and based upon evidence that has been before the Supreme Court, and upon which the Supreme Court has made a ruling construing the Constitution of the International organization and the district.

The Court: Objection sustained.

To which action and ruling of the court the plaintiffs and each of them at the time duly excepted and still except.

Mr. Drinker: I further offer to prove by this witness that under the provisions of Section 1 of Article 12 of the Constitution of District 21 of the United Mine Workers of America, a controversy over an attempted open shop operation of a former union operator in a union field does not constitute "trouble of a local character" within the meaning of that section, and that those words, "trouble of a local character" have a peculiar significance to the miners' organization, accepted by them in practice and followed, different from the ordinarily accepted meaning of those words.

Mr. Warrum: The defendants renew their objection
879 to the offer, for the reason heretofore given, and because the constitution of the district was before the Supreme Court in connection with these matters, and the Supreme Court has construed the effect of the constitution of the district, as well as the international.

The Court: I was just glancing at part of this opinion of the Supreme Court. We are here to retry the case in conformity with the views expressed in that opinion. So for that reason I will sustain the objection.

To which ruling and action of the court the plaintiffs and each of them at the time duly excepted and still except.

Mr. Drinker: Will your Honor permit me to make a suggestion?

Mr. Warrum: In this connection might I suggest something in reference to the rule regarding the law in the case?

The Court: I say, law cases reversed by the Supreme Court are generally remanded for a new trial or further proceedings in conformity with the opinion of the Supreme Court.

Mr. Drinker: If your Honor please, with the greatest respect, may I again ask to be heard on this proposition?

The Court: I think I understand it.

Mr. Drinker: With the greatest respect, I feel confident that you do not understand my position.

The Court: I think I do.

Mr. Drinker: I have not stated it.

The Court: I understand the testimony and the purpose for which it is offered.

Mr. Drinker: I feel very badly that I have not been
880 allowed to state my legal position.
The Court: How long do you want to state it.

Mr. Drinker: Turn me loose for ten minutes on anything I want to say.

The Court: Very well.

Mr. Drinker: The Supreme Court of the United States in this case has not held anything in connection with the facts in this case. They could not. This is a new trial to which we are entitled under the constitution, and the evidence in this case is an entirely new case, just as if it were between different parties.

It was impossible for the Supreme Court to find as an ultimate fact that Mr. Bache only mined 5,000 tons a week, when he mined 5,000 tons a day. It was impossible for the Supreme Court to find as a fact what was the technical meaning

of a "local strike" under this constitution. That is a fact, if it is anything. What the Supreme Court says about what is a local strike, within the meaning of that constitution, is an ultimate fact that no court on earth can find as a fact, any more than they can find that two and two make five and make it so.

All the Supreme Court held was based on the testimony of John P. White, the former president of the Miners organization. He was not president when he testified. He stated in answer to the question I asked Mr. Hanraty that this was a local strike within the meaning of the Constitution, and the Supreme Court based its opinion on that testimony. Now, am I precluded from offering testimony to the contrary of that, so that they may base their conclusion upon
881 all the testimony in the case, and not merely on one side? How can I ever have a new trial when I am precluded from bringing forward facts to contradict the facts produced by the other side?

I am through.

The Court: The Supreme Court had before it the Constitution of these organizations, and they placed their construction upon the language in those Constitutions. Even if this court should be inclined to the opinion that they were not correctly construed, in respect to the law of this case, this court is bound by that opinion.

As far as strikes are concerned, they are controlled by the manner in which they may have been called. Suppose a district manager for any cause should attempt to call a general strike, it would be entirely without any power from the district organization.

Mr. Drinker: Of course.

The Court: Suppose the members of a local union or all the members of all the unions in the district should attempt to call or engage in a general strike under that law, they would be without power to originate and carry it on, because the International had nothing to do with it. They were not promenading the strike, or the manner in which it was being carried on. So be it.

If this had been called by the main organization, all of the members of that organization are responsible for their officers and the official acts of their representatives. Other-
882 wise, we would be allowing a few men in a locality, because of the manner in which they engaged in a

strike, without any power, to bind the main organization and throw them in for all this damage. No organization could live under such conditions.

Mr. Drinker: Have I two minutes left of my time.

The Court: I suppose so.

Mr. Drinker: It seems to me the basis of the whole thing, the basis of the Supreme Court's opinion, and I know your Honor will ponder on that, and I am extremely earnest and extremely confident that I am right in it. It seems to me the whole basis of the opinion of the Supreme Court in this case is on the question that the district in this case, under the facts as they were presented to it in the former record, was not attending to the business of the National union, but was off on what we might call a joy ride of its own; that is, that that strike was one which no one had anything to do with but the district; that it was a private grudge the members were working out with Mr. Bache.

If the Supreme Court had believed that the purpose and sole object and sole cause of this strike was not to work out a grudge against Bache, had nothing to do with the local question here, had nothing to do with the sporadic issue, the local issue, but had been of the opinion that the sole purpose of these miners was to restrain interstate commerce then the strike would have been one in which the Union, whoever it was, whether it was three men or three hundred thousand men, were doing the business of the International Union, and the principle would apply as the Supreme Court applied it to District 21. Your Honor will remember that in
883 saying District 21 was responsible for the strike—

The Court: District 21 financed the strike.

Mr. Drinker: Yes, but the argument was made that the district membership could not be liable for what the district officers did in contradiction of their duties, because they were only allowed to call and prosecute strikes by lawful means.

The Supreme Court said that the members and the officers were made agencies of the district organization to carry on its business. Its business was conducting strikes and keeping non-union miners from operating. Therefore, the district is liable, even though the District did not call the strike.

Now, similarly, if, as the Supreme Court supposed, instead of the district going off on what I call a joy ride, they would have been shown to have been acting solely on the business of the International Union to protect their people up in Colo-

rado from non-union competition that would have inevitably resulted had that been allowed to go on and spread, then the District would have been acting as their agency in carrying out the objects and the policies of the International Union, and the International would be responsible under the law of agency.

The Court: You, of course, and properly so, are trying this case from the one angle. It is very evident that this court is not responsible for what the Supreme Court said, but is responsible and must pay due respect to what the Supreme Court said. Of course, you being an interested party, have a perfect right to quarrel with the language of the Supreme Court and the law. Of course, your view of the matter is that the conspiracy was framed for the pur-
884 poses which you charge, and which you have to prove in order to have any jurisdiction in this court, but the court must be guarding both sides of the controversy and taking it for what it is worth and tends to prove, and when the Supreme Court has stated its construction of a document, this Court is going to be guided by that.

Mr. Drinker: Naturally, but my position is that where the Supreme Court can be changed is not on its construction of a document or law, but on the construction of what is the fact that brings it within that document.

The Court: I think I understand the situation. I think we have proceeded far enough on this line.

Mr. Drinker: I am very much obliged for your Honor's consideration.

The Court: I know you are very much interested in the case, and are very much interested in this point, as you necessarily must be, but notwithstanding all that, this court must have a view of the case and law and rules of evidence that it must apply under the oath of this court.

Mr. Drinker: I don't mean that I have nothing else in the nature of that. Those are the important points that I would like to have established, but I will pass to another matter.

There is another offer that I would like to make.

The Court: You may proceed and make your offer, and they can make their objection, and you can save your exception and you will have your record made.

Mr. Drinker: I offer to prove by the witness on the
885 stand that an attempted open shop operation by a former Union operator in a union field, is a question

which directly or indirectly affects the interests of the mine workers of other districts, and is a question which may require a strike to determine, and is such a question as, under Section 2 of Article 12 of the district constitution, obligates the president and secretary of the agreed district to take the action therein specified.

The Court: I did allow him this morning to testify concerning the operation of these mines down here.

Mr. Drinker: I will withdraw that offer and let it stand. We will bring the other question in a little later.

I guess he has not answered any of the questions, so that is all.

The Court: Stand down. That is all.

(Witness excused)

Mr. Drinker: Thank you, sir. You are dismissed unless the other side wants you.

Mr. Warrum: We don't want him.

Mr. Drinker: If your Honor please, Mr. McLachlan now says that the man he saw was not Mr. English Daugherty.

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886 Mr. Drinker: We will offer the testimony of ENGLISH DOUGHERTY, contained in the former record at page 1280.

Mr. Lucas (reading):

"Q. What is your full name, Mr. Dougherty?
A. English Dougherty.
Q. Now, you must talk up so that the last juryman here can hear you, and so that the lawyers for the defendant can hear you.
A. I am a pretty low talker; I have rather sort of a wheezy in my throat, anyway. You try to talk a little loud to me, because I am a little hard of hearing.
Q. How old are you?
A. I will be, I guess, 69 years old.
Q. 69? A. Yes, sir, the 11th day of March, I think.
Q. And where were you born?
A. I was born in Tennessee, Madison County.
Q. Have you any children? A. Yes, sir.
Q. How many?
A. Ten boys; I have just nine now, because one of them died. We raised him.

Q. Now, in the summer of 1914 where were you living?
A. I was living in Briceville.
Q. In what state? A. In Tennessee.
Q. And did you go from there to Prairie Creek?
A. Yes, sir.

Q. How did you happen to go to Prairie Creek?

887 A. Well, I got with this old man Thomas.
Q. What is the rest of his name.
A. Ewing Thomas, and he told me that there was good work down here, and they were paying good wages, and all like that, and he picked me and my son to come with him, and all, and we just up and come, and he said they were working open shop here, just like they was there.
Q. Had you been working,—what was your business?
A. I was a miner and coal digger.
Q. How long had you been in that business?
A. About 43 years.
Q. You spoke of your son, what was his name?
A. A. D.,—Andrew.
Q. That is the man that is there in the back of the room now? A. Yes, sir.
Q. What was his business?
A. He came for the same business that I did.
Q. He was a coal digger? A. Yes, sir.
Q. How long had he been doing that?
A. He had been mining for about,—my recollection is 24 or 25 years, or longer maybe; I can't recollect exactly when.
Q. Then had Mr. Thomas been down here before, when he came to you?
A. Yes, sir, he said he had; he said he just came back.
Q. Now, then, did you ever go from there to Prairie Creek? A. Yes, sir.
Q. When did you start?
888 A. Now, let me see. I don't know what day it was I started, exactly.
Q. How long did it take you to get here?
A. I believe we were two days and a night, or maybe two nights and a day, something like that.
Q. Do you know what day it was when you got here?
A. Yes, sir, we got here, I reckon, somewhere about the 10th.
Q. The 10th of what month? A. July.
Q. How long before the battle happened?
A. Well, I was there,—I had worked,—we got in there on Friday, and I went to work on Saturday following, and

that battle came up there, I think it was somewhere about the 17th.

Q. Then you were there about a week before the battle?

A. Yes, sir.

Q. Now, who went along with you? A. To work?

Q. No, on the train from Coal Creek?

A. That came from up there?

Q. Yes.

A. There was my son and Ewing Thomas and his son and his son-in-law.

Q. Who was the son-in-law? A. Tom Perry.

Q. What was his son's name? A. William.

Q. William Thomas? A. Yes, sir.

889 Q. And the son-in-law; and who else?

A. Jesse Drank, and John Martin, and I don't know whether there was anyone else or not.

Q. Do you remember a preacher along?

A. Yes, sir, J. J. Johnson, and his son.

Q. Whose son? A. Johnson's son.

Q. What was the preacher's name?

A. He just signed his name J. J. Johnson.

Q. What was he coming along for?

A. He was going to work, too, in the mines.

Q. What was his son's name?

A. They just called him Pete, is all I knowed about him.

Q. Do you remember anybody else that was along, any women? A. Yes, sir, there was Jack Brooks, along, too.

Q. Was there any women along?

A. Yes, sir, Mr. Thomas' wife, and son William, and Tom Perry and his family.

Q. What family did Tom Perry have?

A. He had a wife and two or three,—three or four children, I don't know which, I don't just remember.

Q. Were there any other women along?

A. Yes, sir; William Sanders and his wife were along.

Q. Now, when you got to Prairie Creek, where did you live? A. Where did I live?

Q. Yes.

A. Well, I didn't live hardly nowhere, I stayed around up there by the fan, with William Sanders and his

890 wife, on the hill, just above this fan they are talking about getting blowed up, or torn up, or something like that. I didn't stay there long enough to realize the numbers of the work, or nothing at all about it. I worked of a night and slept of the day when I could, and I didn't go nowhere except to the boarding house to get my meals.

Q. What did you do there, what did you work at?

A. I watched the fan there.
Q. Did you guard the fan? A. Yes, sir.
Q. Did you have a gun?
A. Yes, sir, I had a gun.
Q. What kind of weather was it? A. Pretty hot.
Q. Where did you sleep?
A. Just slept from one bush to the other, in the shade around, and sometimes on some old mattresses and things, that were down there to lay on.
Q. Speak up a little louder.
A. I laid around on those old mattresses for a while, and back up in that town in those buildings where there was no one living. I got my little bit of sleep that way.
Q. Now, when you were there did you hear any rumors or talk about any trouble coming?
A. Yes, sir, that met me next day.
Q. What was that? What was the talk and rumors around the camp?
A. They said they would not let a man that came there to Prairie Creek outside at all, without getting skinned
891 pretty bad before he got back in, and maybe never get back in.
Q. Was there any talk about anything that was going to be done to the property, or the people on the property?
A. [—].
Q. Now, don't say what anybody told you, but was there any well defined rumor in the camp, or feeling in the camp, that an attack was going to be made on it?
A. That was the opinion [—] everybody; you talked to everybody there, and that is all I knew about it. It was inside there.
Q. Was any time fixed in connection with that, as to when the trouble was going to happen?
A. Well, they told me that it was just as soon as they went to hoisting coal there, that they were going to make a break on us.
Q. Who?
A. They said that the union men were going to do it. That is what they told us there, whether it is true or not, I don't know.
Q. During the week that you were there up until the night before the 17th, did you hear any shooting going on?
A. Yes, sir, they had a good deal of it.
Q. Where?
A. It was back,—right over this way (indicating).
Q. North or south?

A. Well, I wouldn't know where north or south is there. You know where the fan is, that fan, it was back this way to the right of the store.

Q. How far away did it sound?

A. They were going right up the railway or dirt road. I don't know whether they was any dirt road there or not, but they were shooting right along, I never heard such a racket in my life.

892 Q. I don't mean the day of the battle, but before that?

A. That is what I am talking about; I believe it was the night before this happened, a night or two before; and there were 75 or 100 guns, or more, they were fired there; and me and my son were right there at the fan, and they went up through there, shooting and hollering, that gang of men did.

Q. Were they company men, or men you didn't know?

A. People I didn't know, I didn't see them to know anything about them, but all the men in the camp said that is what it was.

Q. Said what? A. That they were union men.

Q. Now, when you were in the camp during that year, did you hear of any of the company men going over toward Frogtown? A. No, sir.

Q. Or doing any shooting there? A. No, sir.

Q. You didn't hear that?

A. No, sir, not that I recollect of.

Q. Did you hear of any of the men going anywhere outside of the camp? Do you know of any of the men going out of the camp?

A. There was a man there that they called big boy, that went around. He told me this out of his own mouth.

Q. I don't want you to tell what he said. On the night of July 16th, that is the night before the battle, where were you? A. I was at that fan.

Q. What were you doing there?

A. I was guarding the fan there.

893 Q. What time did you go to work there?

A. I went to work, I believe, as well as I recollect, at six o'clock in the evening.

Q. Who was with you? A. My son.

Q. Your son Andrew? A. Yes, sir.

Q. How long were you there?

A. Well, we were there,—how long I had been there that night?

Q. Did you stay there all night?

A. I stayed there all night, yes, sir.

Q. Did anything happen in the night to attract your attention?

A. Yes, sir, it excited me right sharply, and all like it.

Q. About midnight what happened?

A. They started,—something got wrong with the lights.

Q. Describe what happened?

A. And it would shake and quiver a while, and then it would light up and go out, and along a little while before daylight it all went out.

Q. Did it come on again after that? A. No.

Q. Was that all over the camp that the light went out?

A. I suppose, it was out where I was at.

Q. Now, after the light went out, did anything happen specially during the rest of the night until daylight?

A. No, sir, not that I know of.

Q. About daylight what happened?

894 A. Just along, immediately after daylight, when they come there to relieve us from our post, we went down in town to get our breakfast, at a lunch house, or boarding house, and we all ate breakfast, and this William Sanders asked me and Andrew if we would help him carry up a bedstead that he had made a deal there [there] with some lady, I don't know who she was, and put it up in his house, where we were aiming to sleep, you know, and I told him, yes, we would take it up for him or help him. And old man Johnson done the same, and they went in there and put the stead up, and about that time it got pretty warm, and it was getting hot in the day, and I stepped out the door like, and I said, 'Hullo, boys, look a yonder, what a smoke, what does that mean'. And about that time they commenced shooting down there. There were four or five guns fired down there, and directly they just commenced to play a tune shooting, and the buildings were burning. This William Sanders' wife was right a young girl before she was married, and she hadn't been married but a very few days, but was only about 14 years old when she was married, and she had no sense, and she took off up the hill as hard as she could go, and I said to Andrew, 'You overtake her and tell her to stop', and William Sanders took after her, too, and they kept going right on up the hill, on up that little clumps and stuff, and my son got up there and hollered, 'Pa, come on,' and I walked up the hill, not thinking it was anything as great as that, and then I looked down and seen them coming up through that hollow, that street there, and men, it looked like there was a million men, and shooting, too, they were not playing.

Q. What were they shooting?

A. Shooting everything, shooting up the town.
895 Q. Shooting toward you or away from you?
A. No, they didn't see me yet. It was a little way to my right, and we were going up this way, and the boy could never overtake William and his wife at all, and they went right on across the hill some place, and hid, and I went up with my boy, my son, and got up on the hill.
Q. Who else went up with you?
A. No one; him and me stayed down there, and that big explosion went off then.
Q. Where did the big explosion go off?
A. Right about the fan there.
Q. What time was that?
A. That was along betwixt seven and eight, I won't be positive.
Q. Then where did you go?
A. It throwed so much trash and rock and stuff there, and I said, 'We had better move up the hill a little bit further.'
Q. What threw the rock and stuff there?
A. That explosion; and we got up and went around the hill a little piece, and when we got over there, there was Thomas and his wife and the children of Shilly Owens.
Q. Who is Shilly Owens?
A. Just a man there that called himself Shilly Owens.
Q. How many children of his? A. There were four.
Q. Was he there?
A. No, him and his wife aimed to go there with them, and they seen the fire going on inside, and he said, 'Lord, God,

Mr. Dougherty, there's three hundred dollars' worth
896 of stuff in my house.'

Q. Who said that?
A. Shilly Owens. And he said, 'I had better run back and throw it out'; and I said; 'Throw it out, nothing! If they burn the house they will burn your things, too, even if you do throw them out'. But he and his wife run back like they were crazy, and I kept the children there with me, and my son.
Q. Who else did you find there with the Thomases?
A. There was another man up there, and his wife; I forget his name, Schaeffer, or something like that.
Q. How long did you stay there?
A. I stayed there about an hour and a half or two hours.
Q. All that same crowd together? A. Yes, sir.
Q. Then what was the next thing that happened? During that time did you hear any shots going on?
A. Oh, Christ Almighty!

Q. Continually? A. Yes, sir; and the smoke.

Q. Now I want you to describe, so that the gentlemen of the jury will get an idea, as to how much shooting there was going on during that hour and a half?

A. I couldn't tell for my life, if I was on oath, there must have been a thousand or two thousand shots fired from the reports, and I was a little excited, and not much excited, neither.

Q. Could you see where the shots were coming from then?

A. No, not then.

Q. Where were you then?

897 A. Still back on the ridge.

Q. Could you see the people shooting from where you were?

A. No, I seen them shooting as they came through the camp.

Q. When you saw them shooting, coming through the camp, could you see the direction they were shooting at that time? A. Yes, right up toward the fan.

Q. Right up toward the fan?

A. Yes, it seemed to me this was the direction they came from (indicating). I may have it marked off wrong. They were coming off from the Hartford road.

Q. Were they shooting into the company property, or away from it?

A. In toward the company property. And you could hear the bullets rattle. There was some low punky timber. And it was up there.

Q. When you were up at the place with Thomas, and these people, did anyone come up to you? A. Yes.

Q. Who? A. Two men, I don't know their names.

Q. Did they have guns with them? A. Yes.

Q. How many guns?

A. One of them had three, and the other one had one.

Q. Did they say who they were?

A. They never told me who they were.

Q. Did you hear any conversaton between them and Thomas, or your son or anybody, when they came up there?

A. No.

898 Q. You did not hear it? A. No.

Q. What did they do when they got there?

A. They came on up there and just threw their guns on us and told us to surrender. I said, 'We have already surrendered.' 'What are you doing here,' he said, and I said 'I am here to try and take care of myself and our women and children'. And they threw their guns on us and they

commenced talking among themselves, and they kind of calmed down.

Q. Who did the talking?

A. I talked myself, and so did my son. No one else but me and my son talked.

Q. Where was Mrs. Thomas at that time?

A. Right under the hill there, just a step or two away, and she fainted. She was awful weakly anyhow and she just dropped down, and this man said he was a preacher—

Q. (Interrupting) Was he one of the two men?

A. Yes, he said to me, 'Hold my gun' and I took hold of his gun, and he said it was empty. It was a shot gun, an old style shot gun, and he said it wasn't loaded. I didn't care, I didn't look to see whether it was loaded or not. And they brought the old lady to life and he got hold of her by one arm and Mr. Ewing Thomas under the other arm and they carried her off down the hill. He said, 'You fellows come on and let us go to headquarters.'

Q. Did he say where headquarters were? A. Yes.

Q. Where did he say headquarters were?

899 A. He said it was at Hartford.

Q. Did those two men have any marks on them to notice?

A. Yes, they had a handkerchief tied around the left arm, right there (indicating).

Q. Both of them?

A. Yes, both of them, and pretty well all of the rest of them.

Q. What was the color of the handkerchiefs?

A. A white one.

Q. Where did you go with them?

A. We went out down the hill, and we come to a slat and went on down toward Hartford, and someone said something about some water for the women and children, that the women needed water awful bad, and so this preacher man said, 'Come on, I know where there is a fine spring, and we will go there and get some water.'

Q. Did you see any men on the way to the spring?

A. Yes.

Q. What were they doing?

A. Scouting around the hills.

Q. Did they have any guns? A. Yes.

Q. Did any of them have white handkerchiefs around their arms? A. Yes, sir.

Q. How many of them?

A. I could not tell you how many, just about all of them had these handkerchiefs around their arm.

Q. Did you see any shooting?

A. Yes, there was some shooting going on above the hill. At the spring he said, 'Look down yonder, what a
900 crowd. We won't go down to that spring, we will go to a well down here on the side of the road.'

Q. Did you see any horses, as you were going along?

A. I never seed no horse, I seed a mule.

Q. What was the mule doing?

A. The fellows there said they were ammunition men; the men that had us said, 'they are distributing ammunition.'

Q. To whom? A. To them boys, he said.

Q. To the ones with the white handkerchiefs on their arms? A. Yes.

Q. What did you do when you got to the well?

A. He asked me to help carry up a bucket of water and I and my son did that. And we went up and they was drinking the water pretty heavy and most of the men there was drinking the water. And they got a couple of more buckets full. And there was a man right there by the name of Shavers or Shavis, or something or other, and he had his pit clothes on, and this fellow that was there said,—he said after looking at him well, 'God damn your soul I know you' and he said, 'I don't know you' and the fellow said 'don't you go denying my not knowing you'. I know you, and he called him my name, Shavers or Shavis or what not. He was a low, dark skinned man and he turned to him and said, 'Look yonder, God damn your soul, this is the second time, and the third time ought to be the charm.' 'You see that high tree yonder on that mountain?' And he looked and said 'Yes'. His wife and children was there with us
901 and this fellow said, 'You make through that fence and make for that high tree and don't you never look back.' And he took him at his word and I never saw a man run so in my life, you could see that corn wiggle that way (indicating). Then he turned to me and laughed and he said, 'God damn him, if someone don't kill him on the road, the damn snakes will eat him up.'

Q. Did you see any men there that you knew by name?

A. Right there at that place?

Q. Yes. A. No, sir, I didn't.

Q. Did you see any men along the road you knew?

A. No, not that I recollect of.

Q. You did not see any one whose names you knew,—any of those men? A. How is that?

Q. Did you see any men going along that you knew by name? A. No.

Q. Any of these men with white handkerchiefs?
A. No, sir.
Q. Did you know any of them by their names?
A. No, sir, I didn't.
Q. Now, where did you go when you left that well?
A. I went straight on to Hartford. I didn't hesitate much longer. I went on down there.
Q. Did you know who the man was that said that to Shavers?
A. He said his name was Pattie. I don't know anything about it.
Q. Did he say what the rest of his name was?
A. Charles Pattie, I think he claimed it was.
Q. When you went from the well, where did you go next?
902 A. We went right straight on down there, and they got a wagon—some kind of carriage.
Q. Who got the wagon? A. This preacher man.
Q. Do you know what his name was?
A. No, sir, I don't know what his name was.
Q. Did anybody ever write his name down where you could see it?
A. I can't read. There was some gave my son some addresses—how to address letters back down there to them.
Q. Did he give his address? A. I think he did.
Q. Now what condition was Mrs. Thomas in when you were bringing her along?
A. She was in a most bad condition. The way she looked, I thought she was going to die.
Q. Who took her along?
A. Old man Thomas took her along, her husband, and Perry's wife.
Q. Who went in the wagon?
A. Mrs. Perry and those little children was along, the Owen children and Werry's children, and this other strange man to me who ran through the field—his wife and children.
Q. When you were going along the road did you meet any people?
A. Yes, we met people going along the road, scores of them.
Q. Did any of them have guns?
A. Plenty of them, and pistols, too.
Q. Did any of them have white handkerchiefs?
A. I don't think they did, coming up this way, as I recollect now.

Q. Did any of them talk to you?

903 A. Not there, they didn't.

Q. Did any of them say anything you could hear, as you went along?

A. Yes, they said 'There goes the God damned scabs right now.'

Q. Who said that, one or two of them or numbers of them?

A. A good many of them said it, 'There goes a lot of scabs', 'there go the God damned scabs. They have broke the God damned scabs nest up.' They said.

Q. Who said that?

A. That crew that was along there, meeting us.

Q. When you got to Hartford, where did you go?

A. We stayed around there a little while, and there came a fellow in there—

Q. (Interrupting). Where did you go when you went to Hartford? Where did they put you?

A. Back over in a place like a hall, say here (indicating) and we went in a kind of building along here (indicating) somewhere.

Q. Do you know what kind of a hall it was?

A. They said it was the Union Hall.

Q. And you were in the next building to that?

A. Underneath it, right to the right.

Q. Did you all go in there?

A. Yes, we all went in there for a little while.

Q. Did any of the people that brought you up go in there with you?

A. Yes, sir, lots of people, men and women, too, came along there to have a talk with us.

Q. Did you see this fellow Pattie there?

A. I saw the same man that said he was Pattie.

904 Q. Did he talk to you about anything that had happened back at the mines? A. Yes.

Q. What did he tell you there?

A. Well, he said, 'They have tore up everything this time. Boys, I am sorry. You too look as if you ought to be good men, and I am sorry they have excited you fellows that way.' He said, 'The other fellow that is there'—we had been there but a little while—until we got a chance to realize what the trouble was.

Q. Did he say anything to you about what had made,—did he say anything to you about that big explosion you had heard? A. Yes.

Q. What did he tell you about that?

A. He talked on right smart about it below there a little piece, and he said, 'There was a stick and a half of dynamite or a case and one-half of dynamite.'

Q. A case and a half of dynamite?

A. Yes, a case and a half of dynamite, 'And we blew it to hell.'

Q. Did he say who put it there?

A. No, he didn't say who put it there; he said, 'We blew it into hell.'

Q. When you were up there did people come in and out of the place all of the time, or were you left there by yourselves? A. In that house?

Q. Yes.

A. There was some people in and out until after they took J. J. Johnson's evidence.

Q. Tell us about that.

905 A. They moved us across over in another house.

Q. You mentioned taking J. J. Johnson's evidence; what was that?

A. They took him there, and they said they wanted him to give a statement of what was done there, and all like that, and wanted us to state this, 'Now you fellows want to swear that them guards fired on us first,—fired on these men.' And I said, 'Brother, I couldn't do that, you know I couldn't. There was not a shot fired from inside there that I know of. The first shot I ever heard and all I ever heard out there was in Frog Town and you people as you came along. Only the other night there was a great gang going up, they said towards Midland, and they fired guns.'

Q. Keep your voice up, Mr. Dougherty.

A. So they took old man Johnson down yonder and kept him an hour or an hour and a half maybe, and he came back out, and he was sweating pretty heavy when he came out of there, and he said 'Boys, I will tell you that is a tough place. I will tell you, they want you to tell everything in the world that you know and that you don't know. Just answer their questions. I had to do it'. I said, 'I ain't going to swear to any lie. They can kill me if they want to, but I am going to swear the truth,' and I am. I don't care what comes or goes, I ain't going to swear to any falsehood, if I know it, not for myself nor anybody else, except it would be I would swear false to keep from being killed or save my neck from being hung.

Q. Never mind that. Did you see any friends of yours when you were there in that room, anybody you had known before?

A. Yes, sir, I saw one there. I saw several men there,
906 but I can't remember their names.

Q. Do you remember seeing anybody you had known before?

A. Yes; a fellow came there to me by the name of McDonald.

Q. Where had you known him before?

A. He was raised right there by me in Tennessee.

Q. What was his job? A. He was digging, I guess.

Q. He was a coal digger? A. Yes.

Q. Did he tell you he was? A. Yes.

Q. He was in there with the rest of these men?

A. He said he was.

Q. I don't mean that—did he come into the building where you were with these Union men?

A. Yes, he came in there with them in the building there and discovered me.

Q. Was he one of the same crowd?

A. Yes, sir, and he came up to me and shook hands with me and he said, 'Why, God damn it, I understood you had gone home and left here.' And I said, 'How did you understand that?' And he said, 'Horace O'Neal came up from there and he said you and your son was gone from there. I went to the big gate two or three times, and took a buggy up there to take you out, but they said you were gone.'

Q. When did he say he was there?

A. Two or three days before this destruction happened.

Q. Did he take you over to his house that night?

907 A. Yes, sir, he asked the authorities there—he said he would stand good for us and all like that.

Q. Did he tell you why he wanted to take you out of there?

A. Yes, he said he wanted us to go home with him, that he didn't know what would happen to us, but he didn't believe anything would happen to his house.

Q. I don't mean why he took you to his house, but why he came to get you out of the mine two or three days before?

A. Well, he said there was going to be hell played over there and he knowed me and my son. He used to play with my son Andrew and wrestle around at Briceville, Tennessee, and he didn't want us to be in that skirmish, that he expected everyone to be killed, and he told me and this man Pattie, that there was not a living man left up there, and that is a lie, because I have seen them all since.

Q. Did you go home with him to his house?

A. Yes, sir.

Q. Did you have any more talk with him at his house?

A. Yes, sir, we talked there a right smart while until late bedtime.

Q. Do you remember anything else he told you about what happened down there?

A. Yes, he said that them boys all came, 'he said I will tell you English, there are about 6000 men—

Q. Go on, Mr. Dougherty, and say what he told you at his house.

A. He said there was 6000 union men that were there, that came over out of Oklahoma, and Hartford, and
908 back over at another station back there—I disremember what place. Anyhow, there was 6000 of them, and they drunk since they went into their meeting there 13,000 gallons of whiskey.

Q. 13,000 gallons?

A. Yes, that is what he said. Tom is a pertty good wind jammer, I know that.

Q. Do you think he meant that or was he exaggerating?

A. Did I say 13,000 gallons?

Q. Yes. A. 1300 is what he said.

Q. Was anybody there with you and him when you were talking there? A. Yes, my son was there.

Q. Was there anybody else there? A. Yes.

Q. Was his wife there?

A. Yes, his wife was there and the two children. His wife said, 'Now, Tom, look here, old fellow, don't be talking that way. Mr. Dougherty might happen to be a witness.' And Tom stopped then and didn't talk any more. But he took care of us that night and gave us supper and breakfast.

Q. The next morning where did you go?

A. He went with us a piece towards the place down there, and he said 'Right yonder is where you fellows have to stop; I have some business.' And I said, 'I would rather you would go down with us, Tom' and he said, 'I will be down in a few minutes,' and he turned and walked away.

909 Q. Did you see him any more after that?

A. I don't recollect I did, and I don't believe I did.

Q. What became of all of you the next morning?

A. We just stayed around in that place all that day.

Q. All of Saturday?

A. Yes, all day Saturday. When this mayor of the town took me and my son down to the depot, I was going to wire for a ticket for me and him, and these other folks and he said he would ticket them all. I told him I could get money enough there to get home on if I just had time to. And they went on down there and then Saturday evening late this

Mayor, or a man they claimed to be Mayor, I don't know whether he was or not for sure,—but anyhow he came to me and my son and told us, he said, 'I will have [yout] tickets fixed out in the morning with the other people.' And so, Sunday morning before breakfast they got ready and taken us down to the train, to the depot, and he gave us tickets and told us to go. I said, 'My fare will be here in a little while, I guess' and so it did, but not before I left.

Q. When were you in the warehouse with those men did they say anything about any other non-union mine around there?

A. Yes, they talked about Spadra and a place they called Wheelbarrow, ain't there a place called Wheelbarrow? And Jamestown.

Q. What did they say about that?

A. They said that they were going to wage on them. That was not Tom told me that.

Q. Who told you that? A. Pattie.

910 Q. What did he say?

A. That they were going to wait on that place in a few days, and just like they did at Prairie Creek.

Q. Did they say anything about the attitude or feeling in Hartford in connection with the Union?

A. Oh, they said everything,—that there was not a man there but that belonged to the Union. I told them I had to have a little tobacco, and they said I couldn't get any tobacco if I wasn't a union man. He said, 'You can't get it, I will get it for you'. And I was a stronger union man than he was, if he had just known. And he went and got the tobacco himself and let me out. I paid for the tobacco myself.

Q. You took the train on Sunday morning, did you?

A. Yes, sir.

Q. Where did you go to then? You need not describe it in detail; did the crowd go with you? A. Yes.

Q. When did you go back to Coal Creek or Briceville, Tennessee?

A. We left Sunday morning and run into Little Rock. Sunday night we got there I think, and we got home Tuesday.

Q. You have said that some of those people gave your son some slips of paper with names written on them. Have you got those slips of paper with you? A. Yes.

Q. Get them out, please.

A. Here they are (witness produces slips of paper asked for).

Q. Where did you get these?

A. I got them from my son.
911 Q. When did he give them to you?
A. He never gave them to me until we got home.
Q. What did you do with them after he gave them to you?
A. I just kept them in my pocket a long time, and then had them filed away with some other old papers there, and finally I went and put them in the bank. You can see the bank cashier's name on them.
Q. Have they been out of your possession since the time they were given to you except when you put them into the bank? A. No, sir, they never have.

Mr. Drinker: I have had these slips of paper marked for identification Plaintiffs' Exhibits 12 and 13.
A. (Continuing.) I hate it about that trouble as bad as any man.
Q. Did McDonald tell you where he worked?
A. I can't tell what mine he was at at that time, where he was working at.
Q. Did he tell you whether it was a union mine or not?
A. Yes, he said it was a union mine. He said everything was union."

Mr. Partain (reading): "Cross Examination

Q. Mr. Daugherty, what time did you get over here from Tennessee to go to work in the mine at Prairie Creek?
A. Well, it was July somewhere, about maybe the 8th or 9th or 10th. I could not tell exactly when, to save my life, but it was right along about that time.
Q. What character of service were you to perform in that mine, or about that mine?
A. Well, I was expecting to keep the stable.
912 Q. To do what?
A. I was attending to the stable. They told me that would be my job, this man Thomas did.
Q. That is the man that employed you to come over here?
A. Yes.
Q. He employed you at Briceville, Tennessee, did [you?]
A. Yes.
Q. And you came over to go to work in the stable?
A. Yes.
Q. And you got over here about the 10th of July?
A. Yes, sir, about that time.
Q. What did they put you doing, attending stable or doing something else?
A. They put me watching at the fan, to keep it from being torn out.

Q. Did they give you a gun? A. Yes, sir.
Q. What kind of a gun was it they gave you?
A. It was one of the high power guns.
Q. A high powered rifle? A. Yes, sir.
Q. How many rounds of ammunition did they give you at the time they gave you the gun?
A. Well, they gave me, sometimes I would have two or three or four, and sometimes more along that way.
Q. What did they tell you to do with the gun when they gave it to you?
A. Well, sir, they never instructed me to do any-
913 thing with it, only to take it there for protection to myself.
Q. You were working in the capacity of a [deluty] United States Marshal, were you, or were you working as a private guard at the mine?
A. Well, sir, a man came to me and told me to go up there and watch. I don't know who he was. I don't know whether he was with the company, or it was intended to be the United States Marshal or not. You see I never had learned a thing in the world. I had just been there a short time and never got on to hardly a thing.
Q. Did you ever fire the gun while you were working there? A. No, sir, I never fired the gun in my life.
Q. Did you work night or day? A. Night.
Q. How many nights did you work at guarding at that fan house? A. Five nights, that is all I worked.
Q. What hour did you go on duty, and what hour did you go off duty?
A. Well, sir, I really don't know at what time in the evening I went on, but we came off at 6:00 o'clock in the morning, and I believe we went on at 6:00.
Q. Give us the best information you have about the time you went on duty in the evening.
A. I believe we went on at 6:00 and came off at 6:00.
Q. You had something in the neighborhood of a 12 hour shift? A. Yes, sir.
Q. Who was working with you? A. My son.
914 Q You and he were guarding at the same place, were you? A Yes, sir.
Q Now on the night before this trouble, on the 17th, you have spoken about some shooting around out there. In what direction was that shooting from the mine with reference to the town of Hartford?

A It was back in there sort of towards the place called Frogtown.

Q You do not know who was shooting back there at Frogtown, do you? A No, sir, I don't.

Q About what time in the night did that shooting back towards Frogtown begin?

A Really I don't recall. It was somewheres about 7:00 or 8:00 o'clock. It commenced in the fore part of the night.

Q How long did it last?

A Oh, it was such scattering shooting now and then. It was not continual at all.

Q Did it keep up all night, or just a part of the night?

A It didn't keep up all night, but just a part of the night.

Q Did it keep up until 11:00 or 12:00 o'clock?

A I think so.

Q Then you never heard any shooting firing in that direction after 11:00 o'clock?

A Not until the next morning, to the best of my recollection.

Q How many guns were in that camp?

A Brother, I could not tell you.

Q There was a great many, wasn't there?

A There was not but a few guns, I don't think I never saw them if there was.

915 Q You and your son were not the only guards, working there? A Oh, no.

Q Was there a boarding [hous,] or house, inside of the stockade there where the guards slept?

A I never seen any stockade there.

Q Or a place where the guards slept, those that worked at the mine, didn't they have a place to sleep?

A Yes, they had a place for the day men or the [right] men to work and a little bunk house fixed for some of them to sleep in.

Q How far were you from the sleeping quarters the night you were guarding the fan, when you say the shooting was taking place up toward Frogtown? A What?

Q How far was it from where you were stationed over to the bunk house where you say the day guards slept?

A Between a quarter and a half a mile.

Q And you never went to the bunk house during that night? A No, sir.

Q You stayed there at the fan house all night, from the time you went on duty? A Yes.

Q And you were not over to the bunk house where the men slept that night? A No.

Q When did you come over here, Mr. Dougherty, to testify in this case? A I came here Monday.

916 Q You came here last Monday? A Yes, sir.

Q You came here as a witness or did you come at the request of someone?

A I suppose it was a subpoena. I was notified by the company to come.

Q Did someone write you a letter to come? A Yes.

Q Was it a Mr. Curtis? A Yes, sir.

Q Did Mr. Curtis go over to Tennessee, to Briceville, to talk to you about this matter? A Yes, he came to Tennessee.

Q He talked to you before the depositions of Mrs. Perry and others were taken at Briceville?

A That is the first time that I saw him.

Q Your deposition was not taken there, was it?

A Not that day it was not at the same time these others were. It was taken the same time Mrs. Perry's was.

Q You mean at that time you made a statement or gave your deposition before the Notary Public?

A I gave a deposition before a Notary Public.

Q Then you made a sworn statement before a Notary Public and gave it to Mr. Curtis? A Yes.

Q And your deposition was not taken? A No.

Q Mr. Curtis is a detective for the Bache-Denman people, in this city? A I don't know that.

917 Q Do you know what his business is? A No, sir."

Mr. Lucas (reading: "Redirect examination

Q Mr. Daugherty, you made a statement that you knew I was in Clinton the same day Mrs. Perry was? A Yes, sir.

Q Was Mr. Curtis there the day you made that statement?

A I believe he was,—no, I don't think he was in the house when I made that statement.

Q Was I there?

A No, I don't think you was. Mr. Bache was there,—yes, you came in there.

Q And the Notary Public was there? A Yes.

Q And the Notary Public wrote it down on the typewriter? A Yes, sir.

Q And the next day you swore to it or was it that night?

A I swore to it that night.

Q But you were not examined by the other lawyers at that time?

A No. That statement that I made there is just as correct as the sun is going down.

Q I see. Did you make the same statement there—did you say the same things that you have here?
A I think I did just as near as I know how."

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918 Mr. Lucas: We next offer the testimony upon the previous trial of ANDREW DOUGHERTY, the son of the witness whose testimony I have just read.

Mr. Hardin: (Reading)

Q. State your full name. A. Andrew Daugherty.
Q. You are the son of English Daugherty who just testified? A. Suppose to be, yes, sir.
Q. Where do you live? A. I live in West Virginia.
Q. What is your business? A. Coal digger.
Q. How long have you been a coal digger?
A. I have been a coal digger something like about 25 or 30 years,—something like that.
Q. How old are you? A. 46 the 24th of this month.
Q. Have you a family? A. Yes, sir.
Q. What? A. I have a wife and seven children.
Q. Seven children? A. Yes, and myself and wife.
Q. Are they all living with you?
A. No, only five are at home, two are married.
Q. Now, in June and July of 1914, where were you living?
A. I was living at Slaystone.
Q. What were you working at? A. Digging coal.
919 Q. Take your hand away from your face, Mr. Daugherty. Every one here has to hear you. When did you first hear anything about coming over in this direction?
A. Well, I met this man Thomas, Hugh Thomas, I believe they called him.
Q. Hugh Thomas?
A. Yes, as far as I know that is his name, and he had been down here, he said, I don't know whether he had or not. Anyway he said he had been down here and come back and was going to move back, and he got me and my father to move back. There was me, my father, Tom Perry, John Martin, old man Thomas' son Will, and Perry's wife, William Sanders and his wife.
Q. Any children?
A. Yes. There were some children, I don't know how many. The Perry's had two or three.
Q. Did you bring your wife and children?
A. No, sir, I didn't.
Q. When did you come to Ft. Smith? A. Fort Smith?
Q. I mean to Prairie Creek?

A. Well, I believe it was somewhere about the 9th or 10th, I am not sure.

Q. What day of the week was it? A. It was on Friday.

Q. You came there on Friday, the Friday before the battle? A. Yes.

Q. You were there a week?

A. Yes, from Friday to Friday.

920 Q. What did you do?

A. Guarded and night watched there at the fan.

Q. With your father? A. Yes.

Q. Where did you sleep?

A. Sometimes in the house, and sometimes in the shadow of the bushes.

Q. How many nights did you guard?

A. I made about four or five shifts. I believe five shifts is what I worked.

Q. When you were there did you hear any general talk around the camp, that anything was going to happen about the camp? Did you ever go out of the camp? A. No, sir.

Q. Did you know of any company men ever going out of the camp doing any shooting near?

A. No, sir, I don't remember that I did.

Q. Did you ever hear any shooting out of the camp?

A. I don't remember that I did. I heard a little shooting around the camp there at night, a shot or two, but I don't know who was doing it.

Q. The night before the 17th, were you on guard at the fan house with your father? A. Yes, sir.

Q. In the middle of the night did anything happen?

A. Yes, sometime along in the night, I don't know just what time it was—but some time along in the night the lights began and kind of went out, kind of darkened down, and me and my father we set at the edge of the bushes just above the fan, and the lights went down and then came back

921 up, and then snapped out and went out. I don't know what time of night it was, but they were dark from that time on until daylight.

Q. Did anything else happen during the night?

A. Along about 4:00 or 5:00 or between 3:00 and 5:00, somewhere I ain't sure about the time. There was a terrible volley of shots fired toward the school house, towards No. 4 camp. I don't know whether it was No. 4 camp or not, but it was at the mine there, it was back toward the school house.

Q. Did you see who was doing the shooting?

A. No, sir, it was kind of dark and I could not see.

Q. How soon after that did you hear any more shots?

A. Those shots were fired and it was [quite] until after breakfast. We stayed at this place until this man came and relieved us.

Q. Who came and relieved you?

A. The first man that came I don't know who he was. He was the man on day duty, and this man Hugh Thomas I think was the next man, as well as I remember. I don't know the other fellow's name at all.

Q. And you went back to breakfast?

A. I went from there to my breakfast.

Q. What happened then?

A. I went on over to breakfast and ate breakfast and then this fellow Sanders and his wife was there and they ate and we were standing out there in the shade of the bushes below the eating house, talking, and Sanders said to me, "Come on, you and your Daddy come on over to this house over here and help me get a bedstead over to the house so we can stop sleeping on the floor" and he pointed to the house that [—]
bedstead was at. And we went [And] got the bed-
922 stead and taken it to the house. Me and Sanders and
his wife and J. J. Johnson taken it up to the house; and when we got to the house we went and sat down in the shade of some bushes talking, and we were not talking over four or five minutes when I heard some slow shooting down to my left. They said it was No. 3 camp where it came from, and I got up and looked down and me and Johnson were sitting there, and Sanders and his wife were sitting on the porch, and she had her shoes off and was in her stocking feet. I looked and I couldn't see anything but the smoke, it was a long ways and I could not see the men at all. They kept shooting and it kept getting hotter and hotter, and then me and my father went on to the left, to that mountain and Sanders and his wife went through the house, she got her shoes and she ran on as far as I could see her. We tried to stop her and we couldn't. We went over the hill and stopped on this side. And I said to father, "Let us go up higher on the hill", they were shooting so much.

Q. Could you see where the shooting was coming from?

A. No, it was in the woods.

Q. Did you see any of the men doing the shooting?

A. No, I didn't see anyone shooting, I just heard it. I was out in the mountain, in the timber, and could only hear the reports.

Q. Where did you go then?

A. I went on to the top of the hill after things quieted down, to see if I could see Sanders and his wife, and I could not find them, and then I said to my father, "Let us go to

the Mansfield". And on the way there we met up with Johnson and the fellow Thomas and two or three more men, with their families, and we went out to the end of that ridge,
923 and it was bluffy on the other side and we could not get down and I said, "Boys, we might as well stop here. Someone will come to us directly." That is about the remarks I made. We went up from our shanty and left all our coats there at that house, and then J. J. Johnson said he was going back for his coat and I told him he ought not to go back, but to leave it go, and he said "No, I left my coat down there and I am going back for the coat." And I said, "If you are going back bring back my coat." And he went on, and I don't know what happened to him when he was gone, and he came back and brought our coats.

Q. Was the shooting going on all this time?

A. Yes, sir, it was going on now and then. It would die down again and come up again.

Q. Did you hear anything except the shooting?

A. Nothing more than heavy jars of shooting, I don't know what it was.

Q. Did it sound like rifle shooting, or something else?

A. No, sir, it sounded like dynamite or something else, it was a heavy jar.

Q. What time was it?

A. I couldn't state what time it was. I had no time with me.

Q. What direction did it come from?

A. It seemed to me, from where I was, it was kind of back of me right toward No. 3 camp, towards that fan house.

Q. You said two men came to you? A. Yes.

Q. Tell about that, all what happened.

A. We were all sitting down, as well as I remember, on the side of the hill, and I heard something and I turned
924 around, and some men came up from No. 4, like they came up out of the camp.

Q. Were they men that had been working around in there?

A. I don't know whether they had or not. I didn't know the men at all. I was there only a short time. I didn't know any of the men when I got there.

Q. What happened?

A. Those men drew their guns down on us and asked me what I was doing. I said, "You see what I am doing, we are just here." They asked me why I was there and I told them I came there to get work.

Q. Speak up, Mr. Daugherty.

A. He said, "Did you know this was a union country?" And I said, I didn't know whether it was or not. This is the

man I came down with and he said this was an open shop and no disturbance. He said, 'I was run out of Tennessee for just such as that'. I didn't know what he meant. I told him, —about that time the women and children went to squalling and Thomas' wife fainted. And when they commenced that he said, "Hold on, don't get excited, we don't aim to hurt anybody." He said, "I will take you into headquarters". And I said, "Where is headquarters?"

Q. Is that all he said, before the women were crying?

A. I don't remember. He said something or other—"You know this is a union country and we don't allow scabs to work in this country" or something like that. I won't be positive just what he said.

Q. Did one man do all of the talking, or did both of them talk? A. One of them did most of the talking.

925 Q. What were the rest of them doing at this time? Thomas and the rest of them?

A. They were standing around there like they were scared to death?

Q. Where was Mrs. Thomas?

A. She was kneeling down like she was sick or faint, or something and Mr. Thomas was still working with her all the time. And then that man said "Don't get excited, we don't aim to hurt a one of you".

Q. Where did you go from there?

A. To the town called Hartford.

Q. On the way, did you see any people?

A. Yes, sir, I seen lots of men on the way.

Q. Where did you go first when you left that place?

A. I went right towards the way they said was Hartford, along the top of that hill. A part of the time I was on the top of the hill and a part of the time I was on the lower side, when they were shooting.

Q. Did you see any men when you went along there?

A. Yes[?]

Q. Did any of them have any guns? A. Yes.

Q. Did any of them have any marks on them that you noticed?

A. Yes, sir, I believe I saw them with those handkerchiefs tied around their arms.

Q. Around which arm?

A. I am not positive which arm it was. I know I saw several with white handkerchiefs tied around their arms, but I ain't positive which arm. I never paid any attention to that.

926 Q. Did you stop anywhere on the way?

A. No, sir, no where, only I believe at a well or spring.

Q. How many men were there around that well?
A. Oh, there were several men there.
Q. Did any of them have these handkerchiefs on?
A. Yes, sir.
Q. Did any of them have guns? A. Yes, sir.
Q. Did they talk to you?
A. Yes, they all talked, and that fellow that went out there with us—they would get off a part and talk, and everything was all right. I didn't know what they said. They said they were taking us to headquarters.
Q. Where did you go from there?
A. We went out that road from that well, on down to the place at the tipple where it was burned up; they said it was No. 3.
Q. Where did they say they were going to take you?
A. To Hartford, to headquarters.
Q. Headquarters of what?
A. I don't know what they meant by it. They said they were going to take us into headquarters.
Q. Did you walk in, or how did you go in?
A. I walked in.
Q. Did the rest of them walk?
A. I am pretty sure all of the men walked. They got a little wagon and put that sick woman and children, or maybe all of the women they could get in there. I don't know just how many women and children they did get in the wagon. I think the women and children rode in that wagon.
927 Q. On the way in did you meet any one? A. Yes.
Q. On the way in did you meet any men? A. Yes.
Q. Did any of them have guns? A. Yes.
Q. Did any of them have white handkerchiefs on them?
A. I don't remember that I seen any of them we met coming that way that did,—coming from Hartford.
Q. Were they coming from Hartford?
A. Yes, sir, they seemed to be, meeting us.
Q. Did they say anything to you or at you?
A. No, sir, not that I know of. They were laughing and talking, and I didn't give them very much attention because I was pretty well worn out and excited and I didn't give them much attention.
Q. When you got into Hartford, where did you go?
A. When we got into Hartford, they took us down to an old building they called a Union Hall, that is on the first floor, as well as I remember.
Q. Did any of them come in there?
A. Yes, sir, they came in and out all the time we were there.

Q. Did any of them tell you what their names were there?
A. Yes, I believe there was several of them,—two or three.
Q. Who were they?
A. One man told me his name was C. E. Pattie, I believe.
Q. Did any of the rest of them tell you what their names were?
A. Yes, there was two or three. I believe three of them gave me their address the morning I left there and told me to write them but I forget their addresses, and I forget their names. I cannot read and write my name. I just
928 barely can.
Q. Did any of them write their names down or say they would write their names down?
A. Yes, all three of them gave me their names. They seemed to like me pretty well and told me to write them when I got home, and they gave me their addresses.
Q. Your father has handed me two slips of paper which have been marked plaintiffs Exhibits No. 12 and No. 13. Will you look at those two slips of paper and state what they are, and if you remember receiving them, and if so from whom you received them?
A. Yes, sir, I remember the papers all right.
Q. Who gave them to you?
A. This fellow Pattie gave me this one (indicating).
Q. You are pointing to Plaintiff's Exhibit No. 13?
A. Yes, sir.
Q. Who gave you the other one?
A. When I went to start away that morning Pattie gave me this first, and then the other fellows acted pretty nice and when Pattie gave me his address I turned around to them and two more wrote their names but I can't read their names.
Q. Do you know who the men were that wrote their names?
A. No, sir.
Q. Were they the two men that came to you on the hill?
A. One of the men, this one Pattie did, and one of the other two fellows that went all the way with me.
Q. From where? A. From the mountain into Hartford.
Q. He was one of the men that came to you on the mountain? A. Yes.
929 Q. What kind of a looking fellow was he?
A. A big, tall, red complected fellow I believe he said he had been a preacher, maybe a Baptist preacher.
Q. Was he a coal digger at the time? A. I don't know.
Q. Did he say that he was?
A. I don't remember that he said what he was.
Q. What did you do with those two papers?

A. I took them on home and I wrote these two fellows, this fellow Pattie and this fellow McDonald. I know I wrote to him twice and never got an answer.

Q. What did you do with the papers?

A. And to be looking over my books and papers when I left and I found them and gave them to my father saying they might be profitable some and might not. I wrote to Pattie and the fellow McDonald, but either one of those fellows I don't know them except by name, what they told me.

Q. You speak about McDonald; where did you see him?

A. I saw him in the town they called Hartford. I never was there before.

Q. Where did he come to see you?

A. After we were at that hall I was telling you about, along in the evening they moved us up to some kind of a store house, and that is where McDonald came to me.

Q. Where had you known him? A. At Briceville.

Q. When had you known him there?

A. I had known him when I was a boy, a way back.

Q. Who was there when he came to see you?

930 [—] Oh, there was quite a crowd there, there was a big crowd there from every direction. There was a young fellow came to me—I don't know how many men these fellows brought to me from Tennessee to see if they knew me or I knew them, and I didn't know them at all but this fellow McDonald, and I knew him.

Q. Was Pattie there at that time?

A. Yes, Pattie was right there. He was our guard and stayed right with us all the time. He stayed right in front of our door all the time that night, as well as I remember, and then this young man, this red complected man,—I don't remember whether he was on day or night, but those were the two that principally stayed at the door.

Q. When they were there, did they tell you anything about what had caused the trouble down at Prairie Creek?

A. I don't remember. They were talking about the Union being too strong for such things to go on. I would not state positively, because I don't remember.

Q. Did McDonald talk to you about it at that time?

A. Yes, McDonald said to me that evening after we got to talking, "I was so afraid you and your father had gone up" I believe he said "two or three times I have been to that gate at them camps and called for you and your father and the gate man told me you were not there."

Q. Did he say why he wanted to go down there to see you?

A. Nothing more than he said "he would have hated it if we had gone into it and got killed".

Q. Did he say he knew there was danger of your getting killed?

A. Yes, sir, I am pretty sure the way he talked he thought there was some danger.

931 Q. Where did you go? Did you go to stay at his house?

A. Yes, from there we went to his house. When he came to me he said to me and my father, "I want you to go home with me and stay all night." And the Mayor was standing around there, at least they called him the Mayor of the town, and he said to him "Old man Daugherty is going home with me and also his son, to stay with me tonight, will it be all right?" And the Mayor said at first no, that we had better stay here, and they went off and talked a little while and then they came back and said it would be all right, and we went up with him and stayed all night with him and took breakfast and came on back down town and when we got down town we met some fellow I don't know who he was, and he said for me and my father to stay around pretty close, that he wanted to take some depositions some time and I said all right, and we went back to the house. That was Saturday. Saturday evening McDonald said, "I think I can get you off in the morning and you can go home" and I said, "All I want is to go to the telegraph office and telegraph for money to buy a ticket to go home on", and we went down there and father paid for the telegram, and it was late and they could not get it off that Saturday, and the next day was Sunday and they knew they could not get it off then, and when Sunday morning came, they had us all ticketed, the whole bunch of us. And on Sunday morning they started us home.

Q. [They] you got home in two or three days?

A. I got home in two or three days, I believe. Monday or Tuesday I got home.

Mr. Drinker: We offer in evidence these two Exhibits, 12 and 13.

932 (The papers so offered in evidence are in words and figures following, to-wit:

Exhibit No. 12

"H. M. Strope, Box 672
Frank Tharp
Hartford, Ark."

Exhibit No. 13

"C. E. Pattie
Box 376
Hartford, Ark."

Mr. Partain: (Reading)

Q. Where do you live, Mr. Daugherty?
A. I live at Lakes, West Virginia, now.
Q. Are you working now? A. Now?
Q. I mean,—
A. (Interrupting.) When I am at home, yes; when I am at home I was working.
Q. In a coal mine? A. Yes, sir.
Q. How did you happen to be in Ft. Smith at this time?
A. Well, I really don't know, hardly.
Q. Did you get a letter inviting you to come?
A. Yes, sir,—no, my father tried to write me to come, they tried to write me to come and they couldn't get no letter no way to me, and father came after me.
Q. He came from Tennessee?
A. He came from Tennessee after me.
Q. He lives at Coal Creek, Tennessee?
933 He lives at Briceville, Tennessee.
Q. What kind of a mine are you working in now, union or non-union? A. Non-union.
Q. What kind of a mine did you work in in Tennessee during the 15 or 20 years that you were a coal digger there?
A. Part of the union mine and part of the time it was not.
Q. How long since you have been a union miner?
A. I don't really know, it has been quite a while since I unioned out there.
Q. I believe you stated that you were working as a coal digger generally, before you came to Prairie Creek in July, 1914?
A. Yes, sir. I have been a miner nearly all of my life, since I was old enough to work.
Q. How long had you been working as a non-union miner before you came here?
A. It was quite a while; I don't remember how long but quite a while.
Q. You came on the invitation or employment of Eqing Thomas? A. Yes, sir.
Q. He had been down there?
A. He told me he had, yes sir.
Q. Do you know whether he was there engaged in gathering employees from the non-union mines to bring them here?

A. Do I know?
Q. Yes.
A. No, I really don't know. He just told me he was moving back here, and we got to talking, and a number of us agreed to come with him back down here.

934 Q. Now in the afternoon, or during the day of the 17th, you say, after you got up on the hillside, you met two men?
A. There were two men came to us.
Q. They came to you? A. Yes, sir.
Q. And one of them went into Hartford with you?
A. Yes, sir, as well as I remember there was one of the men, I would be pretty sure.
Q. And you had some conversation with both of them while you were there, stationed on the mountain?
A. Yes, sir.
Q. And you talked to the other as you went into Hartford?
A. I talked to a lot of them as we went in.
Q. And you talked to a good many after you got to Hartford that evening and the next day?
A. Yes, sir, and until I left Sunday morning.
Q. And they discussed the situation at Prairie Creek with you? A. Yes, sir, that was the general talk.
Q. And told you they were determined to allow no scabs to work there? A. Yes, sir.
Q. During all of that conversation with all of those men, did you hear anybody say that they were determined that they would not allow a gang to lie out there and insult their girls, and arrest their men on the highway, and shoot up their town, and outrage their community? A. No, sir.
Q. You heard nothing of that kind?
A. I don't remember that I ever heard that at all.

935 The Court: We will suspend until ten o'clock tomorrow morning.

(After the usual admonition was given to the jury by the Court, an adjournment was taken until Thursday, October 18th, 1923, at ten o'clock, A. M.)

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936 Thursday, October 18, 1923.

Pursuant to adjournment at 10:00 o'clock A. M., court reconvened, the parties appearing as before and the following further proceedings were had and entered of record.

The Court: Proceed with the trial.

Mr. Drinker: Call Levi Brown.

LEVI BROWN of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. You have given the reporter your name, have you, Mr. Brown? A. Yes, sir.

Q. What has been your occupation, Mr. Brown?

A. Farming.

Q. Where do you live at the present time? A. Tulsa.

Q. How long have you been engaged as a farmer, about what part of your life? A. All my life.

Q. What were you doing in the spring of 1914, immediately prior to going to work for the Bache-Denman Coal Company?

A. I was farming for Mr. O. T. Luper.

Q. Talk up loud enough so the last juror over here can hear what you say? A. I will do my best.

Q. What was your answer?

A. I was farming for Mr. O. T. Luper down near Hartford, Arkansas.

937 Q. Where was Mr. Luper's farm with reference to Prairie Creek Mine No. 4?

A. It was east of the mine if I mistake not.

Q. And was it immediately adjoining the coal company's property? A. Yes, sir.

Q. In addition to farming did Mr. Luper have a small mine down on his farm? A. Yes, sir.

Q. Do you remember the 6th day of April, 1914?

A. Yes, sir, I do.

Q. Do you remember the crowd coming on the mine property on that day? A. Yes, sir.

Q. The day of the riot? A. Yes, sir; I do.

Q. Will you describe what happened on that day,—talk out loud?

A. Of course they employed us, that is Mr. Luper went out of the farming business and taken over the mine to run the mine and that throwed me and my partner out of work, so Mr. Luper engaged us to work at the mine.

Q. What was Mr. Luper at that time?

A. Mr. Luper was manager, if I mistake not, at the mines.

Q. Mr. Luper had given up his farm and had gone with the Bache-Denman Coal Company? A. Yes, sir, as manager.

Q. And you were out of a job and went with him?

A. Yes, sir.

938 Q. Who was your partner? A. Joe Barnes.

Q. You were farming for Mr. Luper previously?

A. We were living in the same house together; in fact, we had been living together all the winter.

Q. Will you describe what happened at the mine the day of the riot, beginning at the beginning and go right through with it?

A. The day of the riot, the first I knew of it, I was sick in bed, and the first I knew my wife said, somebody was playing a band, going up the road, and that band went up to the little school house, you could see it from out my window where I was lying in the sick bed. About one o'clock they came to the mines, and they just had a rope to show where the company property was, just a wire rope, a cable that had been used at the mine for hoisting, and some signs put up that said "Company property", and those people came down to this rope, and gathered up there, and then they broke over, on the inside, after they were up there, and I could hear them shouting and hollering and going on, and they broke over, and came inside, and then I could see them come around and up on the tipple, and on the dirty dump, and put up a big banner on the tipple. I read it after that, it said "Union men's Country". It said that on this banner, this big signboard, and they also put a United States flag up there, and after they did that they came over to where I was in the sick bed.

Q. Let me interrupt you a minute. How were you able to see all of these things if you were in bed sick at the time?

A. There were lots of windows in it, on both sides, several long windows, I guess six or seven, the building was
939 long, and I could see out those windows, they were all open.

Q. The building in which you were sick in bed, was inside of the mine property, was it?

A. Yes, sir, inside of the mine property, right at the tipple.

Q. All right, if you will proceed with what happened when the men came over to your house?

A. They came over to my house and wanted to come in there, they said, and they had clubs, and my wife told them they could not come in and they said, "We will", and she said they could not, and she got a knife, a butcher knife, and went to the door, and kept them out.

Q. Who was this got the butcher knife? A. My wife.

Q. All right, go ahead?

A. And they abused her considerably, and I thought sure they were going to come in anyway, but she kept them away by threatening them with the knife.

Q. Did they make any threats against you?

A. Yes, sir, they said they were going to get me anyway.

Q. Now, with reference,—who was this living there with you?

A. Joe Barnes, and his wife. Mr. Bache had employed our wives to do the cooking for the men that were there, there were not but a few men, and they employed my wife and his wife to do the cooking for a few days.

Q. And you and Mr. Barnes were working at this mine?

A. We were employed to work at the mine.

Q. Do you remember some men coming to your house later that day?

940 A. Yes, sir, there were men come later that day.

Q. About what time of the day was it?

A. Well, there were some come back in the evening, along about four o'clock, right after Joe came out of the mines; just before he came out, in fact they was there when he came out of the mines and made him leave, him and his wife and baby.

Q. At that time did you have,—did you have a baby at that time?

A. Yes, sir, I had a baby and Joe had one about the same age.

Q. And both of the babies were in the house at the time of this trouble? A. Yes, sir.

Q. Was there more than one group of men come into your house?

A. Yes, sir; some come about 8:00 o'clock that night, I can't state what time, somewhere about 8:00 or 9:00 they come to my house.

Q. Did anything happen then,—what did they do when they came there?

A. They was trying to put something under the floor when I first noticed or heard them. I heard them kind of talking low and I just raised up in my bed and looked out the window. I had a pit light burning, and it shined on the outside enough to kind of see on the outside, and I seen a man stooping down trying to shove something under the floor and I decided he was going to set the house afire, or bomb it, and I was sick, and couldn't get away, or I would have been away, if I had not been sick and was not able to go.

Q. Did you do or say anything to him?

941 A. Yes, sir, I asked what he was doing?

Q. What did he say?

A. He said, "Are you the sick man"? And I said, "Yes, sir, I am the sick man" and he said, "Never mind then, we won't bother you if you are the sick man". And then someone spoke, I don't know whether it was the one that was talk-

ing to me or not, but someone said, "Are there any company guns here", and I said, "No, sir, there is no company guns here that I know of".

Q. Were there any guns in your room?

A. Yes, sir, I had a thirty-eight that Charles Cheek gave me the day the riot first broke out. He came to my room and said, "Levi, can you use this", and I said, "I don't know, you can leave it here if you want to". He gave it to me, and I took my right hand and put it under the covers like this (indicating) and I was lying there with it in my right hand all of the time my wife was at the door with the butcher knife.

Q. That was the day she was keeping the men out?

A. Yes, sir.

Q. When you saw that man shove something under the house, did you see any other men?

A. There were several out there, I could see in the dark, —of course, it was in the dark, but I could see several men, I couldn't say how many, but there was a bunch of them.

Q. Did those men come in and search your room?

A. Yes, sir, they asked if there were any guns, and I happened to think of this, and they said, "We can't take your word for it, we are coming in the house anyway," and
942 I told them yes, I had a little gun they might have if it was any good to them, and when I said that they throwed a gun on me, and I could see it, a fellow came up to the window and throwed it on me and said "Stick your hands up", and I never put up my hands before, and I didn't want to put them up, and my wife begged me to put them up, and he said, "You put them up or I will blow your light out", and cursed me.

Q. What did he say?

A. He said, "Put your hands up or I will blow your light out".

Q. Did they come in then?

A. They broke the door in and came on in. We had it barred, a bar, a place where we could bar it, like you bar a door.

Q. Was he abusive in his conduct?

A. Yes, sir, he was. The gun I had, I had put it under my pillow, and it worked down, and he told me to get the gun for him, and I couldn't get it, and finally I found out where it were, but I had my hands up and I couldn't get it for him and of course my wife, I couldn't say whether she was excited or not, but they wouldn't let her get it. He must have been drinking. I never could get him to understand where it was, and he had my hands up there a long time, I don't know how long it were.

Q. Did anything else happen that night after they left your house?

A. Yes, sir, after they got through abusing my wife and I they went out of the house and on over towards the tipple. Where we lived and the tipple were about, oh, say 200 feet from where we lived to the tipple.

Q. Did you see anything take place at the tipple?

A. Yes, sir, they went on over to the tipple, and I
943 seen a fire kindled upon the tipple. I seen them hammering around, and directly a fire commenced to blaze on the tipple, about the second panel of the tipple.

Q. Did you, just immediately before that fire started, did you hear anybody going up the steps?

A. Yes, sir, I could hear them climbing up there.

Q. What happened to that fire?

A. It thundered right away after they went out of the house and then began raining, and when the fire was burning, it was burning pretty brisk, and it just rained real hard, and the next morning the tipple was still there, just like it were.

Q. The rain put out the fire?

A. The rain surely put it out.

Q. Now, Mr. Brown, what were your duties at the mine; what were you employed to do?

A. I was first employed, at the time of the first riot, to work in the mines, and the second riot, after they got the injunction, they hired me to drive the supply wagon from Midland to the mine. I lived in Midland.

Q. How long were you sick after the riot of April 6th?

A. I was sick right at a month.

Q. About a month?

A. Clean on up to about the time they got the injunction. That was May the 8th or 9th that the injunction was given, and I was sick, and stayed in Midland.

Q. Immediately after you got up from your sick bed you started to drive the wagon?

944 A. The company supply wagon, and hauled supplies to the mine.

Q. Hauled supplies from where?

A. From Midland to the mines, groceries and supplies.

Q. You would go on down and get supplies and bring them to the mine? A. Yes, sir.

Q. Who was superintendent of the mine at that time?

A. Mr. Cameron.

Q. Did Mr. Cameron outline to you in his instructions to you what would be the situation as to guards accompanying you on these trips to town?

A. He said to me to go ahead with my task, with my work, and haul supplies out to the mine, that he didn't think it would interfere with the union miners, as that was not connected or against the union workers. So that was my idea, that I would not be molested at all. And he told me to go ahead with my work.

Q. You were driving the company wagon?

A. Yes, sir.

Q. And was that the reason he said you would not be disturbed, that you were not a miner?

A. I was not a miner, I was driving the supply wagon, and not working in the mines.

Q. He said you could go down to town without any guards until when? A. Until I was molested.

Q. Now, were you molested on any of your trips to town?

A. I was molested on the second trip out.

Q. What town did you go to when you had your first trouble?

945 A. I was on the way from Midland out to the mines, the first trouble.

Q. What had you gone to Midland for, what was your purpose in going to Midland? A. To get supplies.

Q. Was the trouble on your way back?

A. Yes, sir, on the way back, out of Midland.

Q. Will you describe that please?

A. When I was going out of Midland on the second trip, just after I came across the railroad, and came to the power line, I looked up at the power line, just as I got even with it, and there was a man masked, and also there were four others that showed up that had a mask on, and I went on out to the mines and reported this, and Mr. Cameron said they would have to put guards on the wagon, that the guards would only go to the corporation line of Midland.

Q. Now, the guards were only to go up to the town limits?

A. Yes, sir, the corporation line.

Q. Because of this trouble that you had just described?

A. Yes, sir, because of the trouble I just described.

Q. Now, did you have any further trouble?

A. Then on Saturday after that, I don't know just the date, the guards were on the wagon, and we come to the corporation line, the town limits and Charlie Cheek, he was out of tobacco and he said he was going into Midland; he was one of the guards, that he was going to Midland to get him some tobacco, and he said, "I will lay this gun down in the front of the wagon and cover it with sacks". There were

two sacks in the wagon, and he covered the gun up,
946 and he went down to Midland. I loaded my load, and coming out of town,—

Q. You had no trouble in town?

A. No trouble up in town, but coming out of town, while I was still in town the trouble occurred.

Q. Describe what happened?

A. I was driving along down the road, coming out of town, and there were four men showed up, in fact, I seen the men working the streets when I came in, and when I got down even with them, there were two on each side of the road, they throwed their tools in the road, and two of them caught hold of the mules by the bit, and the other two came back with their shovels drawed, one on each side, one on Charlie Cheeks side, and one on my side, and would have knocked us off the wagon with the shovels, if Charlie had not got his gun, and when he got his gun they got back from the wagon.

Q. Did he have to point the gun at them?

A. He told them if they didn't turn the mules loose he would shoot them, and they had better drop their shovels.

Q. Had you ever seen those men before?

A. I seen one working at No. 4 mine; I don't know his name, but he had a scar on his face.

Q. He worked there while the mine was a Union mine?

A. Yes, sir, while the mine was a Union mine.

Q. To your knowledge was it the practice for people living in Midland to take their turn on road work?

A. Yes, sir, to my [knowings] it were.

947 Q. Now, will you describe the further trouble that happened when you and Charlie Cheek and Will Bohannan went in on the [eight] of May to get supplies?

A. Mr. Cameron told us, after this trouble with the men with the shovels, that the guards would go on into town. On the Monday following we had to go up to town after a stove and two boxes of [brad] and the guards went on with me up town and we loaded the stove out of the car and also the bread, and just as we got loaded, and come around close, by that fellow's store there, let's see,—

Q. Mr. Farrell, Buck Farrell's?

A. Buck Farrell's store, I noticed them crowd up, a whole gang of men and boys around that store, and in the street, and I had to stay up on the wagon and hold on to the box of bread and Charlie Cheek and Will Bohannan said, they would drive the team, and we turned around and started out toward No. 4 mine, and they began throwing rocks at us, and

running after us and throwing rocks. I did not realize what was going on right at the time, until Charlie hollered, "Look out, Levi, they are going to hit you", and I happened to notice they were throwing rocks pretty close. We drove pretty fast, we thought we might get out of their way, but they kept running and throwing and the boxes were about to fall off, and Charlie and Mr. Bohannan just stopped, and one got out on one side of the wagon, and one on the other, and when they got out they taken their guns out, they were lying in the wagon and covered with sacks, and one got out on one side and one on the other, and got their guns
948 out and fell out on each side of the wagon, and showed them their guns. I did not see them level them down on nobody, but they showed them their guns, and said, "Stop right now", and when they did that it was not long until there was nobody. Mr. Cheek said, "Tie those boxes on, now", and I tied them on the best that we could, and we got on the wagon and started again, and when we started we heard somebody and looked back, and here comes the whole crowd again, and two men with pistols, hollering, three men there was, the city authorities and told us to stop, and said, "Consider yourselves under arrest" and we did so.

Q. Mr. Brown, who was it that placed you under arrest, do you know?

A. I don't remember the names just now. It has been a good while ago.

Q. Somebody in authority?

A. It was the city authorities,

Q. Did those same authorities make any effort to arrest these men for throwing those rocks, that you know of?

A. They made arrests when we filed complaint. Mr. Cheek and Mr. Bohannan and myself knew several of the boys that were throwing rocks, and identified them, and they filed a complaint for throwing rocks at us and they set the trial at 6:00 o'clock that evening. While we were up in the Mayor's office some of those fellows said, "Just let them come back at 6:00, that is the time we want them here. We will try our shoes out on them when we get them here tonight". That got in the air, and we didn't appear against the boys. We didn't want to go up there and get
949 kicked out of town.

Q. What happened to the case against you and Charlie Cheek and Will Bohannan?

A. They filed a complaint against us for disturbing the peace and brandishing guns, and had us up for trial the next morning at 9 o'clock, and the city fined each one of us a hundred dollars.

Q. Mr. Brown, when you were arrested, did you make any protests?

A. I told them I didn't want to go to jail and I told them also to search me.

Q. Did you know what you had been arrested for?

A. No, I didn't know at the present, I just knew they arrested me; I didn't think I had done anything to be arrested for, but I knew I was arrested.

Q. Did you tell them you didn't know you had done anything? A. I told them I didn't do anything.

Q. But they arrested you anyway?

A. They arrested me anyway, they say they were going to put me in jail, but they didn't. I had never been to jail before and it kind of bothered me that I would have to go to jail.

Q. Did you know whether the constable or whoever it was that arrested you, saw these men throwing rocks at you?

A. I don't know whether they seen it or not, but I knew that he knew that there was a whole bunch following him down there.

Q. You were going in the other direction when the rocks were thrown?

A. Yes, sir, I couldn't see where the cops were, the [laws] were.

Q. Now, this trouble was on May 18th, is that correct?

950 A. About that time.

Q. Was it soon after the injunction?

A. Right soon after the injunction, not but a few days.

Q. You testified at the injunction proceedings?

A. Yes, sir.

Q. Now, did you continue at the mine until the battle of July 17th?

A. I did, I continued at the mine and worked at the mine until July 17th.

Q. Now, will you describe to the jury just what happened the day of the battle?

A. On July 17th at 8 o'clock the whistle blew for work and I went to the office to see,—there had been quite a little trouble during the night; that is, they had shot into the camp during the night.

Q. About what time of the night?

A. About midnight, I suppose, there was a bunch come in,—they come in from toward Huntington, and I guess there were a hundred shots fired.

Q. Fired into the mine or out?

A. Into the mine, all around the mine and into the camp.

Q. Did anything happen at daybreak?

A. At 7:00 o'clock,—now, during the night there was nothing occurred but that shooting, but of course the guards were all on the alert, and watched pretty close, in fact, we all stayed up the whole night through; in fact, there was nobody did any sleeping, they were all afraid.

951 Q. Now describe what happened in the morning?

A. I went to the mines about the usual time to go to work, and the foreman said there would be no work, but the whistle blew just the same, and there were a bunch of men in the office. I went in the office, in fact there was a store room at the back of the office. There was a partition in the building, and they had a store back in the back end, and I was there in the store and I heard shooting again, and a bunch of the boys and guards all rushed into the magazine place, where they had to keep their guns, they called it a magazine. Everybody fell for that box, and gathered them a gun and some ammunition and went right out there, and when they got to the porch they began shooting across the Midland tracks, you know where they run. I stayed in the office a while, and got out and went home.

Q. In going home, did you go by No. 3 camp?

A. No, sir, I lived between No. 4 and No. 3. I went around between some loaded cars of coal and down through the boiler room, and on down to a cotton patch to where I lived, in a log house, not very far from the mines, just about a couple of hundred yards, I reckon, from the mines.

Q. Do you know a man named Shilly Owens?

A. Yes, sir.

Q. Did he come to where you were that morning?

A. Yes, sir, Mr. Shilly Owens were working at the mine there, and after I had been home some bit, Shilly Owens and his wife came to my house, just [scarred] terribly and had a white sheet on a broom handle or hoe handle, or some

952 other stick anyway and said that the miners had captured them and told them to come back over there and if there were any men over that had women and children to come on out toward No. 3 camp, that they would take them down to Hartford and take care of them, and treat them right. Shilly had followed his instructions and my wife and I just left what we had, our household goods and everything that we had and I taken the baby in my arms, and we left and went to No. 3 camp.

953 Q. Then where did you go, Mr. Brown?

A. Just as we topped the hill, before we went into No. 3 camp, we seen a bunch of men with guns, and they told us, they motioned to us and told us to come to them. When we got down there where they was at, there was one fellow

tried to punch my ribs out or my chest in with a pump gun. He was cursing me and jobbing me with that gun, and I just told him if he intended to kill me, why, to do it, that I had taken all the abuse I could stand.

Q. Continue on and describe what happened next.

A. There was a fellow there I knew, Frank Gripando, a union miner that lived over there in Italy, and while this fellow was punching me with that gun, and I was telling him he could kill me, that I had taken all the abuse I could stand, he says, "I can do it", and he jumped back to shoot, and a man told him, "Don't do it." He says, "For God's sake, don't shoot him." He just stopped then, and told me to go on down, to go to Hartford and stay in the road, not to leave the road, if I did they would kill me. I taken them at their word and went on down toward No. 3, the way the road runs over to No. 3 camp, or down No. 3 slope, rather, toward Hartford, and before I got to No. 3, just before I got to No. 3 shaft, I seen another fellow. He had a load of boards, and there was a bunch of them following him, and he started across there, I suppose, to set another house afire—there were a whole lot afire all along there. They were burning company houses. A lot of these company houses was afire. This fellow had a bunch of boards and started over
954 toward another house. I said, "Wife, I know that fellow, don't you?" She said, "No, I don't know him." That was John Bernick.

Q. Do you mean John Bernick or John Manick?

A. Manick, that is the name.

Q. M-a-n-i-c-k? A. Yes, sir. He was a Polish.

Q. Was he a union miner? A. Yes, sir.

Q. What was he doing when you saw him?

A. He had a bunch of boards afire.

Q. Burning boards? A. Yes, sir.

Q. In his hands? A. Yes, sir.

Q. What was he doing with them?

A. I suppose he was setting houses afire. There was a line of houses afire all along there, and he had started toward another one. So they began shooting me, and me and my wife had to take to the woods, or they would have killed us.

Q. Where were you when they started shooting at you?

A. I was just coming out of that No. 3 camp, down to the road toward Hartford, just before I passed No. 3 slope.

Q. Did they tell you they would not shoot you if you stayed in the road?

A. They said, "We will kill you if you leave the road."

Q. Did you stay in the road? A. I couldn't.

Q. You couldn't?

955 A. I didn't, and they began shooting at us, and I seen the best thing to do was to leave and I taken to the woods.

Q. Did you have the baby with you?

A. I had my baby on my arm. Just as I left the road and went into the woods, just open woods on the side of the hill there, just as I went off the road they cut a limb off the tree right over my head, a bullet cut a limb off a tree right over my head, and it dropped down like that (indicating), and I knocked it out of my way like that (indicating). My baby just quivered up against my side like that (indicating), and I thought the bullet went through her. About that time another bullet jammed into a tree. I could have put my thumb right on it. It knocked a great big place in the side of the tree just like that (indicating). I kept running and my wife run on after me. We went down the hill and crossed a ravine and I said, "I guess it is about all over now", and kind of slowed up, of course, to wait for my wife, and they shot again. I don't know how near they came to getting me. In fact, it burned me, just kind of burns me, it was so close. I went on into a corn field and kept working my way out of there, over one ridge and down another.

Q. You say your wife was with you? A. Yes, sir.

Q. Did she have a second baby?

A. Yes, sir, she had a second baby two months later. That was November 23rd.

Q. Was that second baby born on November 23rd or September 23rd? A. September 23rd.

Q. The September immediately after this July, 1914.

956 A. Yes, sir.

Q. Where did you go after that?

A. We went on down to Mansfield, and from there I taken across the country coming up toward—well, let me see, coming up toward Hartford. I went about 3 or 4 miles across those ridges there, and stayed all night with a man named Black, and my wife stayed there with Mr. Black and I come to Ft. Smith. I come to Ft. Smith the next day after the battle, walked in. I got in Ft. Smith here about 9 or 10 o'clock at night.

Q. How far did you have to walk to get to Ft. Smith?

A. Across the country there I don't know how far it is. I guess it is around 40 miles, the way I come. I come across the Greenwood and Hartford road, or the Greenwood and Waldon road, and up that road to Greenwood, and come on in on the Texas— I don't know what road they call that road now.

Q. Your wife was with you up to when?

A. She was with me until I left her with Mr. Black down there. I forget his initials, but I left her with Mr. Black and she stayed there about a week.

Q. Is your wife named Preddro Brown? A. Yes, sir.

Q. Is she still living?

A. No, sir, she is dead. She has been dead a couple of years.

Q. You referred in your testimony, when this man was poking a gun in your ribs, to a Mr. Gripano?

A. Frank Gripano?

Q. Who is he?

957 A. He was not the man that was jobbing me with the gun, but he was standing there. I don't think Frank ever said anything. He had a gun and was standing there. They was in line when they called us down to them. Frank was in line right along with the balance of the men there, and I knew him.

Q. Was he a union miner? A. Yes, sir.

Q. Did these other men in line have guns?

A. Yes, sir, they all had guns. That fellow had a pump gun, the one that jobbed me in the ribs. I never could identify him. I never have seen him to know him.

Q. Now, Mr. Brown, that is all you know about the riot and the trouble in between that and the battle?

A. Yes, sir, that is all I know. Of course, there is a lot of other things that occurred.

Q. We just want you to say what you know.

A. Yes, sir.

Q. Mr. Brown, before you leave the stand I would like to have you describe to the jury the situation of the mine, so they will know just what the property looked like at the time of the riot. If this railing, this jury railing is the dividing line between the mine and the Looper farm, this up here where you are sitting would be the north? Is that correct?

A. I think so.

Q. And you worked for Mr. Looper, who had a farm immediately adjoining on the east? A. Yes, sir.

Q. So this (indicating) would be the east?

958 A. Yes, sir.

Q. What was on the west side of the mine?

A. That was a farm west there, let me see, west and southeast, southwest, was a farm there that lay on the Midland Valley road. The Midland Valley tracks went right down through it toward Hartford, and there was a spur turned off to that mine.

Q. Whose farm was that?

A. I don't remember his name now. I did know.

Mr. Lucas: If the court please, if I may refresh his memory.

Q. Was it Mr. John Bumpus?
A. Yes, sir, Bumpus.
Q. What divided the Looper farm from the Bache-Denman coal property? What was the division?
A. The coal property lay between the Looper farm and the other farm.
Q. Between the two farms? A. Yes, sir.
Q. What divided the coal property from these two farms?
A. Well, a barbed wire fence, a common barbed wire fence.
Q. An ordinary barbed wire fence? A. Yes, sir.
Q. That was a permanent fence, was it?
A. Yes, sir, that was a permanent fence, just a common barbed wire fence on each side.

Q. On either side there was an ordinary permanent
959 barbed wire fence? A. Yes, sir.

Q. What did the company do in the way of marking off its property?
A. They taken a cable out there and just stretched it between those two places, leaving a space for a man to walk along on each side of the fence, stretched it on top from one side to the other, and left a way around on each side. In fact, there was a road on the Looper side.
Q. Up near the Looper side?
A. There was a community road through there.
Q. Was that road which ran along the Looper farm open?
A. Yes, sir, just a community road through there.
Q. Was that on the company's property?
A. Yes, sir, that was on the company's property, or between the company's property and the Looper farm.
Q. On the other side, do you have any recollection of a pedestrian [footwath] through there?
A. Yes, sir. That rope was joined to the corner of the office and there was a place to go down the side of the fence in through there.
Q. How many stretches of wire rope did the company have to put in there to mark off its property on all four sides?
A. The barbed wire fences, they left them there.
Q. They were already there?
A. But they stretched a cable across there and put up a sign, "Company Property". There were several signs all along on the side there, on each end where they put up this

cable. It was just a common cable, a wire rope, like they use for hoisting, Of course, it was old rope, had been thrown away.

960 Q. Do you have any recollection of whether or not, at the time you were there, either of those two wire ropes that the company put up were charged with electricity?

A. I do not. They wasn't charged with electricity.

Q. Were those two ordinary wire fences you have described charged with electricity?

A. No, sir, they were not. There were no fences charged with electricity.

Mr. Lucas: You may cross examine.

Cross Examination

By Mr. Warrum:

Q. Mr. Brown, what time did you go to Prairie Creek?

A. Sir?

Q. What date was it that you went to Prairie Creek?

A. Well, I lived at Prairie Creek for a couple of months before I went to work in the mine.

Q. You were there a couple of months before the crowd gathered at the school house and came across to the mine?

A. Not working at the mine. I was living right there close to the mine.

Q. When did you move in to the place where you were sick?

A. I moved on the 4th up to the place where my wife was doing the cooking, up in the cook shack. We moved up there on the 4th, and my wife and Joe Barnes' wife went to cooking there.

Q. Then you were sick?

A. I taken sick on the 5th, and on the 6th day, the day of the riot, I was sick all day.

961 Q. How long were you sick afterwards?

A. Oh, I was sick for a couple of months.

Q. You remained there on the premises, did you?

A. No, sir. The company sent a hack and moved me up to Midland and put me in a company house up there.

Q. When did you return? A. Back to the mine?

Q. Yes. A. After the injunction.

Q. When was that, if you know?

A. On May 8th, I reckon. It was nearly a month. May 8th, I believe.

Q. You testified in the former trial of this case, did you not? A. Several times.

Q. You testified in the former trial of this case in this court room, did you not?

A. Yes, sir, I was testifying here several times.
Q. And among these several times was the former trial in this case? Is that right?
A. I don't understand your question.
Q. Do you remember when this case was tried before?
A. I remember it being tried. I don't know whether it was this case or not. I don't know what you are trying. I remember being here as a witness and testifying in this court.
Q. Do you mean to state you have not gone over your former testimony with counsel for the plaintiffs before you were put on the stand? Did they give you your former
962 testimony in this case to look over?
A. They never give me what I said. I have told the truth.
Q. Then you have not talked with anyone previous to going on the witness stand, as to what your testimony was in the former trial? I didn't get the answer? Give it so it will be in the record.
A. I have talked this matter over with several people.
Q. Have you talked it over with counsel for the plaintiffs?
A. I don't know.
Q. These are the counsel sitting here.
Q. (By Mr. Lucas) You talked it over with me this morning, didn't you?
A. Yes, sir, I talked it over with you this morning. I didn't know you were counsel.

Mr. Warrum: If the court please, I am not interrogating counsel for the plaintiffs.

The Court: It may be the witness does not understand who are counsel.

Mr. Warrum: I am not crowding the witness.

The Witness: I don't know who is counsel here and who is not. I just got here this morning.

Q. (By Mr. Warrum) Did you testify at the former trial that after you and the other guards, or the guards, went to the magazines and got out their guns on July 17th, that you went out of the building and ran over to the loaded cars of coal, "and our boys was behind those loaded cars of coal, shooting over the top, and every way they could"?
963 A. Yes, sir, I seen all that, but I was not asked that.
Q. Is that correct?
A. Yes, sir, that is correct. Anything I said in court is correct.
Q. Is that correct? A. That is correct.

Q. Were you told not to testify to that?
A. No, sir, I wasn't told not to testify to nothing. I was told to tell the truth, whatever I was asked.
Q. How many guards were there? A. At the mines?
Q. Yes. A. I don't know.
Q. You don't know?
A. There was a bunch of guards there.
Q. How many guns did you see there in the magazine?
A. I don't know. There were several there. I don't know how many guns there was there.
Q. How much ammunition was there?
A. I don't know how much ammunition was there. I am satisfied there wasn't enough, because they had to leave when they got out of ammunition.

Mr. Warrum: That is all.

Redirect Examination

By Mr. Lucas:
Q. You, of course were sick enough to have to have a doctor during that period of illness?
964 A. Yes, sir, I did. It was a good thing, I guess, or I would have been dead. It congested my stomach.
Q. Mr. Brown, I don't believe you fully understood Mr. Warrum's question on cross examination. You said you have testified several times. Do you remember testifying in the injunction case on May 8th? A. Yes, sir.
Q. Did you testify again in the contempt proceedings in this same court? A. Yes, sir.
Q. And did you testify here again six years ago, in 1917?
A. Yes, sir.

Mr. Lucas: That is all.

(Witness Excused.)

The Court: Stand down. Who is next?

Mr. Drinker: If the court please, we offer from page 2379 of the former record, from plaintiffs' Exhibit No. 176 on the former trial of this case, being the treasurer's cash book of local No. 1565, at Midland, Arkansas, so much of page 38 therefore as shows Clint Burris, on August 12th, 1914, to have been paid expenses to interstate convention, $30.

We offer, from Exhibit No. 178 in that trial, page 2380 of the record of the former trial, the following:

"Audit (in lead pencil).

U. M. W. of A. Local Union No. 1565

October 2, 1917.

965 To J. W. Howard, Treasurer:

In accordance with a vote of this union, you are hereby authorized to pay to Billy Johnson the sum of 2.00 Dollars and ....cents, and this shall be your voucher for the same.

Countersigned by A. G. McGRAW, R. S.
John Manick, Prest.
No. 94."

We offer from Exhibit No. 179, marked on the outside "L. U. 2110", so much of page 23 as shows Sandy Robertson to have paid dues on February 15th, 1917.

We offer from Exhibit No. 180, on page 2381, being the financial secretary ledger of Local 112, so much of page 97 thereof as shows Tom McDonald to have been admitted to said local in July, 1914, and to have paid dues during July, August and September of that year.

We offer from plaintiffs' Exhibit No. 185 in the former trial, on page 2383 of the record, being the treasurer's cash book of Local U. M. W. of A. 1530, Hartford, Arkansas, so much of page 2 as shows that James Slankard was paid, on April 23rd, 1912, for committee work, $6.75; on August 26th, for committee work, $7.98; on September 10th, 1912, for pit committee, $11.22; so much of page 11 as shows that James Slankard was a member of the audit committee; on the opposite page, marked September of 1912, so much as shows that James Slankard received on October 8th, 1912, for pit committee work, $7.23; from page 14, December 19th, 1912, that James Slankard received for committee work $13.92; on
966 November 7th of the same year, that James Slankard received as delegate to the American Federation convention at Pine Bluff, $50; that in November, 1912, he received for committee work 55 cents; that on February 20th, 1913, for pit and other committees, $4.23; that on April 17th, 1913, he received $1.38 for salary on committee work.

From plaintiffs' Exhibit 184, on page 2384 of the record, we offer so much of page 163 that shows C. E. Pattie paid dues during the last six months of that year.

From Exhibit No. 185 on page 2384, as shown on page 55 of said exhibit, a notation from July 1st, 1913, "Audit to

June 30th, 1914, H. M. Strope, J. C. Wilson, George Westwood, balance on hand, $268.19."

Mr. Lucas: I now offer the previous testimony of MRS. PREDDRO BROWN, wife of the witness who just testified, who is now dead, beginning on page 1514 of the record. I will read the direct examination:

"Q. What is your name, Mrs. Brown?
A. Preddro Brown.
Q. You are the wife of Levi Brown? A. Yes, sir.
Q. Were you living at Prairie Creek No. 4 in the spring of 1914? A. Yes, sir.
Q. In April? A. April 6th.
Q. Do you remember the day of the riot, when the men came in to the property of No. 4. A. The first time?
967 Q. Yes. A. Yes, sir.
Q. State whether or not your husband was sick on that day? A. Yes, sir, he was sick.
Q. How long had he been sick?
A. He had been sick all that night before; they made the riot the next morning.
Q. Sunday morning? A. Yes, sir.
Q. Had he had a doctor practically all that night?
A. Yes, sir.
Q. Was he in bed when the men came on the property?
A. Yes, sir.
Q. Did you see that crowd gather there at the school house? A. Yes, sir, I seen them.
Q. About how many people were there, if you know, over there?
A. I imagine it was just about 500 or over, from what I could see.
Q. Did the crowd come down to the mine and to the shaft and around the shaft there? A. Yes, sir.
Q. Where were you living at that time?
A. I was living in the cook shack.
Q. In the cook shack? A. Yes, sir.
Q. Where was that with reference to what they call the bunk house?
A. The bunk house was just a little piece from the cook house.
968 Q. A few feet? A. Yes, sir, just a little.
Q. And how far was the cook shack from the tipple of No. 4?

A. I don't know just exactly how far it were, but it was not but just a little ways.

Q. A little ways—can you indicate?

A. As far as from here to the back of the house.

Q. To the back of this room?

A. Yes, sir, it might have been a little bit further.

Q. Now, do you remember, while your husband was in bed that day, and while the crowd was on the property, do you remember the crowd coming to the door of the cook shack?

A. Yes, sir.

Q. What, if anything, did they say or do?

A. They just cursed and wanted to come in the house, and beat my husband up.

Q. What did they call him, if anything?

A. They called him a scab?

Q. Any other names? A. Yes, sir.

Q. You need not repeat them. A. All right.

Q. Did they get into that room?

A. No, sir, they didn't come in.

Q. What did you do to keep them out?

A. I just stood in the door with a butcher knife.

Q. How old are you, Mrs. Brown? A. I am 22.

969 Q. You had a child at that time? A. Yes, sir.

Q. You have three children now? A. Yes, sir.

Q. Was the child there at that time? A. Yes, sir.

Q. In the room? A. Yes, sir.

Q. Later that evening, do you remember other men coming to the door of the room where your husband was sick?

A. Yes, sir, late that evening there were men gathered there.

Q. Had you gone to bed?

A. No, sir, not in the evening, I had not.

Q. When these men came, you were not in bed?

A. No, sir, that evening I was not, but it was that night when the men came.

Q. I am not used to calling the afternoon evening. I mean in the night. A. Yes, sir.

Q. You had gone to bed when those men came to the cook shack? A. Yes, sir, that night.

Q. Your husband was in bed? A. Yes, sir.

Q. What did those men say and do at that time, how many men were there?

A. There were three came in the house, I don't know how many there was on the outside, I never got up and looked.

970 Q. Three men came into the house? A. Yes, sir.

Q. What did they do?

A. They were hunting for company guns.
Q. For what? A. Company guns.
Q. What did they say?
A. They wanted to know before they came in if there were any company guns.
Q. What did these men say?
A. They were hunting for company guns, and wanted to know if there were any company guns in the house, and we told them no, and they said they could come in and see, and my husband told them there was a little pistol there, one that we had, and they came in, and we told them that they could have it if they wanted it, and they came in and searched all around, and tore up the beds, and taken the pistol, and took one little load out of it, and threw it down on the table and walked out.
Q. Did they tell your husband to throw up his arms?
A. Yes sir, they said that before they came in.
Q. Did you that night see anything of a fire on the tipple?
A. Yes, sir.
Q. State what you saw in that connection?
A. They had been gone about a half an hour, and then we seen the fire on the tipple.
Q. Did that fire burn the tipple up?
A. No, sir, there came a rain right away after it blazed up, and put the fire out.
971 Q. Did you hear any one on the tipple, walking up the steps, or on the tipple just before that?
A. Yes, sir.
Q. Do you know what [others] employees were at the mine, if there were any there besides yourself and your husband at that time? A. Around the mines?
Q. Around No. 4, had the employees left? A. Yes, sir.
Q. Before night? A. Yes, sir.
Q You and your husband, so far as you know, were the only ones there?
A. Yes, sir, we were the only ones right there at what they call the bunk house."

Mr. Warrum: No cross examination.

Mr. Lucas: I will read the cross examination; by Mr. Covington, then counsel for defendants:

"Q. Mrs. Brown, how long did you remain there?
A. After the riot?
Q. Yes. A. We stayed until the next morning.
Q. Until the next morning? A. Yes, sir.
Q. Was there any crowd around the mine that morning?
A. No, sir.

Q. No one at all? A. No, sir.

Q. What time of night was it did you say, that the
972 tipple was set on fire?

A. Why, I don't know, but I think it was about 9:00 or 10:00 o'clock, somewhere along there, we didn't have no time piece, and I can't say just when it was.

Q. How long did it burn?

A. It didn't burn but just a few minutes.

Q. About how long?

A. I guess three or four minutes. It burned enough to burn a big spot in the tipple.

Q. Did—at what point on the tipple?

A. On the top of the tipple, I reckon, I never went up there, I just seen the fire up there.

Q. Seen the fire? A. Yes, sir.

Q. Were you ever up there?

A. No, sir, I never were up there.

Q. How did you make your examination?

A. I seen the fire, I am saying what I seen.

Q. Did you see where it had burned, after it went out, or was put out? A. No, sir.

Q. How do you know then it burned?

A. I don't know, I seen the fire up on the tipple, we knew it was up there.

Q. You were just guessing at that. A. Yes, sir.

Q. Where was Mr. Brown?

973 A. He was in the bed sick.

Q. Where is he now?

A. He is at the hotel where we are boarding right now.

Q. Here in town? A. Yes, sir.

Q. Where else have you been besides the mines?

A. We have been at Braden, Oklahoma—not Braden, but Valiant, Oklahoma.

Q. How long had you been at this particular mine?

A. We went there on Saturday, and this happened on Monday.

Q. You came from Braden, Oklahoma, over here?

A. Yes, sir."

Mr. Lucas: I will read the redirect examination:

"Q. What were you to do there at the mine, Mrs. Brown?

A. I was to cook.

Q. You were to cook at the boarding house?

A. Yes, sir.

Q. Your husband is now taking care of the three children?

A. Yes, sir.

Q. Will you tell your husband to come right over here as soon as you get back? A. All right."

Mr. McDonough: We offer the evidence of H. H. York in the former trial, beginning on page 1880 of the record. (Reading):

"Q. What is your full name? A. H. H. York.
Q. Where do you live?
974 A. I am now located in Webb City.
Q. What is your occupation? A. I am a minister.
Q. How long have you been a minister?
A. I have only been ordained for about two months.
Q. How long have you been doing the work as minister?
A. For about four years.
Q. Where did you live in the spring and summer of 1914?
A. 1914, that was the time of the trouble, was it?
Q. Yes. A. I was staying at Hartford, Arkansas.
Q. How long had you been living there?
A. I was not there in the spring; I came to Hartford in June, I believe, 1914.
Q. Had you lived there prior to that time?
A. Yes, sir, I guess three years.
Q. And how long had you been away when you came back in June?
A. Well, let me study just a little bit; I had been away, I believe I left sometime in April and came back in June.
Q. Were you doing the work of a minister at that time, in the summer of 1914?
A. No, sir, I had, just before that, but I was then working in the mines.
Q. Where were you working? A. At Number 4 Central.
Q. How long had you worked there, since you came back in June?
A. No, sir, I have got the dates a little bit mixed up
975 along there; I can't remember just exactly; I had only been working a short time.
Q. Were you a member of the union? A. Yes, sir.
Q. How long had you been a member of the union when this battle took place?
A. I had been a member of the union for a number of years, five or six years.
Q. You remember the time of the so called battle at Prairie Creek Number 4? A. Yes, sir.
Q. Do you remember some meetings that took place a few days before the battle?
A. What do you mean, mass meetings?

Q. Yes. A. I know something about one, was all.
Q. When was that held?
A. I don't know just what day it was; it was the first mass meeting that was held.
Q. And about how many days would you say it was before the battle? A. About three or four days, I think.
Q. Where was it held?
A. We met in the ball park; then there was a motion made and we moved across the railroad to a stand on the picnic ground, kind of a park.
Q. Who made the motion?
A. I don't know who made the motion now.
Q. Was there a chairman appointed at the meeting?
976 A. Yes, sir.
Q. Was he appointed before, or after, you moved?
A. After.
Q. Who was appointed chairman of the meeting?
A. Jim McNamara.
Q. Do you know how that was done?
A. No, I don't remember the details of that; someone, I think, appointed him as he was president of the local union at that time; he generally took charge of all the meetings like that, anything that was done; I don't know whether it was a motion, or how.
Q. Who called the meeting?
A. I don't know, we came out at noon from the mines.
Q. Were you called out?
A. No, we was called out by the driver; he told us we were going to have it.
Q. You were called out of work in the mines by the driver at noon? A. Yes, just before noon.
Q. Did everyone go out?
A. I suppose they did; the mine shut down.
Q. Shut down so you could go to the mass meeting?
A. Yes, all the diggers; I don't suppose any of the company men attended.
Q. But the mine shut down so you could go over and attend this meeting?
A. Yes, had to shut down because the men went out.
Q. About what time was it after you got to the first
977 meeting before you adjourned?
A. Something like 1.30 or 2.00 o'clock.
Q. How long did the mass meeting last?
A. Well, about an hour I guess.
Q. Did Jim McNamara state the purpose of the meeting?

A. Yes; well, I guess you would call it that; he said we knew the nature of the meeting; we all understood what we were going there for when we went.

Q. What were you all going there for when you went?

A. At that time, there had been some trouble. There was some shooting took place between the union and non-union men out there at Camp Beulah; that was what started the talk; and then they was talking about what took place at the mine that morning before we went down.

Q. What had taken place at that mine that morning before you went down? A. Agitation.

Q. At your mine? A. Yes, sir.

Q. What was that mine? A. Number 4, Central.

Q. And on top, you held a little meeting there?

A. No, there was just talk among the men before they went down.

Q. Was the meeting talked about at that time; that is, called a meeting.

A. No, sir, I don't remember anything about it.

Q. Now just state a little more explicitly what you
978 were going over to the meeting to do.

A. Everyone seemed to understand it, because they had been talking among themselves about the trouble and of course it was understood that they were going to do what was best to do. I suppose that some of the union men wanted to go down there and do what they did, later on. I am saying just the best I can about that; I don't know anything except that we just went over there.

Q. To see what was best to do about the trouble; what trouble do you mean?

A. It was shooting that took place at Camp Beulah.

Q. That is, Frogtown? A. Yes, sir.

Q. Between the union and non-union men?

A. Yes, sir.

Q. Now state as closely as you can remember what Jim McNamara said when he got up and made his opening speech.

A. He didn't say very much; he said, 'You know the nature of the meeting', and that was about all; and then it was open for remarks and they called Pete Graham upon the stand and he made a speech; that was about all.

Q. Who was Pete Graham?

A. He was a man that lived at Camp Beulah.

Q. Was he a miner? A. Yes, sir.

Q. Member of the union? A. Yes, sir.

Q. Where did he work?
979 A. Don't know where he worked.
Q. What did he say?
A. Well, he said a great deal but I don't remember just what he did say, only he advised them to not use violence; to be deliberate in everything they did.
Q. Who else made a speech? A. Charley Robinson.
Q. Is that the man who had since died?
A. I don't know whether he has died or not.
Q. The father of Sandy Robinson? A. Yes, sir.
Q. What did Charley Robinson say?
A. I don't remember very much what he said, but he was only just telling some things that happened about a non-union man coming to his house and a little trouble that existed. He related the trouble that took place between the union men and the non-union men at Camp Beulah the morning before.
Q. What did he advise doing?
A. He was quite radical. I don't know now whether or not he suggested any certain thing or not.
Q. What do you mean by he was quite radical?
A. Of course he was a union man and he wanted to take some steps, it seems, in his talk, and I would judge that he wanted to go down there and clean up on them.
Q. You gathered that from his remarks? A. Yes, sir.
Q. Did anyone else make a speech?
980 A. Yes, my father.
Q. What are your father's initials?
A. J. G. York.
Q. Was he a member of the union? A. Yes, sir.
Q. I don't think I asked you, do you know whether Charley Robinson was a member of the union?
A. Yes, sir, he was a union man.
Q. What did your father say, Mr. York?
A. Well, he said; he suggested that we get a writ for the men who was in that shooting at Camp Beulah, and go down and arrest them, was all I remember him saying. Of course he talked quite a while but I don't remember what he said.
Q. Do you remember any circumstances about a telegram having been received just before that meeting?
A. No, I don't know anything about it.
Q. You don't remember something about a telegram that Jim McNamara received from Pete Stewart, do you?
A. That was during the time of the meeting, was it not?
Q. I don't know; I am asking you; what is your recollection of that telegram?

A. He got a telegram while he was talking.
Q. Who was 'he'? A. Jim McNamara.
Q. From whom was that telegram?
A. It was Pete Hanraty; I don't know which one it was; It was the one who was District president at that time.
981 Q. It was the one who was District president at that time? A. Yes, sir.
Q. Do you remember what that telegram said?
A. No, I didn't read it; he only stated it before the public, what it said, but he didn't read it.
Q. What did he say that it said?
A. He said that he advised us over the telephone—it was a telephone instead of a telegram—to not make any move at all; that there was some men in jail at that time at Fort Smith, and that they were only waiting to get some more evidence on the men, and if we didn't wait it would only make matters worse, and he advised us to not do anything.
Q. How many times were you called out from work and advised what would be done about this Frogtown matter?
A. Only once that I remember of.
Q. And that was three days before the battle?
A. Yes, sir, something like three days.
Q. Did you go to work the day before the battle?
A. I don't remember about that, whether we went to work the day before the battle or not. There was about three days that we didn't work there on account of the trouble, but I don't remember whether we went to work the day before the battle or not.
Q. You don't remember whether you went to work the day before the battle, being called out again that morning, the morning before the battle? A. No, sir.
Q. Were you in Hartford the night before the battle?
982 A. Yes, sir.
Q. What did you see there?
A. I didn't see anything; I didn't know anything about it until the next morning; I was at home at that time.
Q. Didn't you go into town that night? A. No, sir.
Q. Do you remember my seeing you, Mr. York, sometime?
A. Yes, sir.
Q. To refresh your recollection, do you remember telling me that you saw several hundred men in Hartford that night with guns? A. No, sir.
Q. Do you remember my asking you if you saw—'Did you see in what direction these men with guns were going?' and you said 'In the direction of No. 4'?
A. I didn't see any men with guns at all.

Q. You don't remember stating that to me?
A. No, sir.
Q. What did you see the next morning, if anything, the day of the battle?
A. Well, I didn't see anything, only just a quite a few people on the streets.
Q. What time did you go out on the street that morning?
A. Well, I don't know; something like ten o'clock.
Q. Did you see any men with guns at that time?
A. Yes, I seen two or three shot guns.
Q. Now, without telling the names of these men, who were they; were they miners?
983 A. Well, I don't know whether they were or not; I know one of them was not a miner that I seen with a gun.
Q. Would you say that you didn't see any men with guns that were miners? A. On what day?
Q. On the day of the battle.
A. I would say that I don't know; I seen some men with guns but I don't know whether they were miners or not; only I know that one I seen was not a miner, with a gun.
Q. Mr. York, do you remember my asking you whether you would be willing to tell the names of the men that you had seen and your answer 'Well, I don't know whether I would or not, you must realize that if I tell these things it is telling it against my own father; he is a good union man; if I was telling them, I would tell them even if it went against my father; it would make all Hartford my enemies.' Do you remember telling me that? A. Yes, sir.
Q. Now just tell the Court who those men were that you had in mind, when you said that.
A. I don't know just what you want me to tell. You said you didn't want any supposition, and I told you I didn't see anything and I told you I wasn't on the streets and I didn't see any men that night. I don't know anything.
Q. Mr. York, what men did you say you had in mind if you was put under oath you would tell the truth; that you didn't like to tell the names; what men did you have in mind when you said that to me when I saw you that night?
[—]
984 Q. What men did you have in mind, that you said you would tell about them, even if it went against your own father?
A. If you remember, you was asking me about a great many men and things that you haven't asked me here; you

was asking me about that there. I supposed that was the evidence you wanted and only positive evidence. I don't know anything; I haven't any particular evidence; I supposed that my father was in the battle, is what I had reference to when you was asking, and of course I don't know anything; I didn't see it.

Q. Who was at the meeting at the ball grounds, that meeting where Jim McNamara presided?

A. I don't remember but a very few; I remember Robinson and McNamara and that is about all I remember.

Q. You remember Pete Graham? A. Yes, sir.

Q. Remember your father being there? A. Yes, sir.

Q. Remember any others?

A. Yes, I remember John Manick.

Q. And who else? A. That is all I remember.

Q. So John Manick was the only one in the audience that spoke? A. Yes, he spoke.

Q. What did he say?

A. Didn't say very much. He only stated something about some men being in jail at Greenwood at that time; he only said a few words.

Q. Did he say who the men were that were at Greenwood?

985 A. No, sir, he did not.

Q. What did he suggest doing about those men who were in Greenwood in jail?

A. Don't remember that he made any suggestion about it.

Q. Why did he speak of them?

A. It came up because they were talking about the men there and that were in Fort Smith jail, I think.

Q. What relation did that have to the subject at the meeting?

A. It all came up under the same head and they received a telegram about that time about these men that were in jail at Fort Smith, or telephone, I meant to say.

Q. What did the telegram or telephone say?

A. He didn't read it.

Q. From Pete Stewart? A. Yes, sir.

Q. Did you go out to the mine the next day?

A. Yes, sir.

Q. See any men coming back toward Hartford?

A. Yes, sir, going both ways all day.

Q. Did you see any miners going and coming both ways?

A. Yes, sir, all classes going both ways.

Q. With guns?

A. No, sir, only saw about three men with guns.

Q. How many did you see going and coming?

A. I didn't count them.
Q. Roughly, approximately?
A. Going and coming all the time continually, some
986 going in buggies and automobiles. I suppose I saw a hundred.
Q. Out of those hundred, how many were miners?
A. Most of them were miners, the whole town is miners.
Q. Were they members of the United Mine Workers of America? A. They were, if they lived in Hartford.
Q. In other words, there was no non-union men in Hartford? A. They didn't allow them to light there.
Q. Did you state how many men there were at the meeting, about how many? A. No, I didn't state.
Q. Will you, to the best of your recollection?
A. Just an estimate?
Q. Yes. A. About 200.
Q. Were they miners? A. Principally miners.
Q. And members of the United Mine Workers?
A. Yes, sir.
Q. Where did you all go after the meeting was over?
A. I went home. I suppose everybody else did.
Q. Did you see Jim McNamara the next day, the day of the battle? A. No, sir.
Q. Did you see Pete Stewart in Hartford that day?
A. No, sir.
Q. Or that night?
A. No, sir, I don't know Pete Stewart.
Q. Do you know whether there was anyone wounded or killed in the battle?
987 A. No, sir, I don't know, I heard that there was.
Q. Didn't see anybody wounded? A. No, sir.
Q. Didn't see anybody after the battle, that had been wounded in the battle? A. No, sir.
Q. Was you over at Number 4 after the battle had taken place?
A. I was over there, I guess, a month afterwards."

Mr. Warrum: We waive the cross examination.

Mr. McDonough: We will read a few questions and answers of the cross examination:

"Q. You do say that Charley Robinson was somewhat radical, but you don't remember exactly what he said about it? A. Yes, sir, that is what I said.
Q. That about the time that Jim McNamara was closing the meeting, or shortly after the beginning of the meeting,

that he received a telephone message from Pete Stewart, the President of the District?

A. No, sir, that isn't exactly what I said. We was talking and I didn't know that they had any intention of bringing the meeting to a close until he received the telephone. After he received that there was a move made that we adjourn.

Q. Now, McNamara went to the phone and came back and reported to the meeting that he had received a telegram from Pete Stewart to do nothing? A. Something like that.

Q. And to refrain from violence; didn't he use those
988 words? A. No, sir."

Mr. Drinker: We offer from Exhibit 183, as found on page 2382 of the record, being the financial secretary's ledger of Local 2770, Hartford, Arkansas, so much of the cover, of the inscription on the cover thereof, as says "James McNamara, Jr., Financial Secretary."

We offer from Exhibit 184, on page 2382 of the record in the former trial, being the financial secretary's ledger for Local 1526, so much of page 134 as shows James McNamara to have been exonerated in July, 1916, August, 1916, and in September; and to have paid dues in October, November and December, 1916, and during six months of 1917.

There is another that I should have offered before, on the same page, higher up, from Exhibit 175, so much of page 2 thereof as shows that Frank Gripando was admitted into Local 1565 in March, 1914, and that he paid dues for that year, except in April; that he was exonerated, and that he was exonerated in July.

Mr. Warrum: I take it counsel will agree that "exonerated" means they were exonerated from paying dues.

Mr. Drinker: Yes, that is correct.

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989 Mr. Hardin: We offer the testimony of GEORGE SIMMONS, beginning on page 1902 of the record in the former trial.

(Reading)

"Q. What is your name?
A. Simmons, George Simmons.
Q. Where do you live, Mr. Simmons?
A. Live in Webb City, Missouri.
Q. What business are you engaged in?
A. In shoveling ore and jack.

Q. For what company do you work?
A. I work for the Star Mining Company.
Q. How long have you been engaged in mining here?
A. About four months.
Q. Did you ever live at Hartford, Arkansas?
A. Yes, sir.
Q. State whether or not you were living there in the year, 1914? A. Yes, sir, I was.
Q. What kind of business were you engaged in at that time? A. Saw milling.
Q. Were you summoned here as a witness today?
A. Yes, sir.
Q. When were you served with a summons?
A. Day before yesterday.
Q. Summoned to appear here this morning?
A. Yes, sir.
Q. State where your home was in Arkansas, whether in Hartford or near Hartford? A. It was in Hartford.
Q. How long had you lived there, Mr. Simmons?
990 A. Right in the city or in the vicinity; I went there in 1899, a mile from Hartford, and lived there about ten years, and then I moved into Hartford.
Q. Were you engaged in coal mining at any time while you were there? A. Yes, sir, off and on all the time.
Q. For what company, or companies, did you work?
A. I worked for the Darnell:
Q. Bolen-Darnell?
A. Bolen-Darnell Coal Company and Prairie Creek Coal Company, and I think I worked a little for the Bache-Denman Coal Company and the Huffman Coal Company.
Q. While doing this work, were you a member of the miner's union? A. Yes, sir.
Q. Are you a member of the miners' union now?
A. No, I would be a member if I was there and paid up my dues.
Q. Did you ever work at Prairie Creek Number 4?
A. Yes, sir.
Q. When did you work there?
A. I didn't work there but just a few shifts; it must have been two years anyhow before it shut down; I worked only four shifts, three or four shifts, something like that, and a night shift and taken it off the same week; I have done a good bit of work at Number 3.
Q. Were these mines being operated with union labor at the time you worked there? A. Yes, sir.
991 Q. And during that time, you were a member of the union? A. Yes, sir.

Q. Did you work any at coal mining in the early part of the year 1914?

A. I might have fired shots at the Bull-Moose. The Bull Moose Company is just a little mine owned by three or four men there in Hartford. Whether I was working any time in the early part of 1914, I don't know; I might have worked until the mines got so slack; it was about that time that I fired some shots.

Q. Do you know whether the Bache-Denman companies, including Prairie Creek Mine Number 4, made an effort, in that year, to open up their mines with non-union labor?

A. I didn't work for them and I couldn't tell only by hearsay and I don't know anything about that you know; I don't know

Q. Where were you on the day that the battle is said to have taken place?

A. I was at home until about 11:00 o'clock and then I walked down the line where they was doing the work.

Q. I wish you would describe what you saw, in your own way, beginning at the time you left Hartford, and describe all you saw.

A. All I saw was just a gang of men; when I got down to Number 4, and there was a gang of men out about a quarter of a mile from Number 4, and I was standing about a quarter of a mile out the other way and then it would be a quarter of a mile to Number 4, and I was just standing there and they was shooting from Number 4, to this gang of men and that gang of men was shooting towards Number 4. There was shots fired from both places and of course I just heard
992 the shots. I could see a body of men out at one side, but I couldn't see nothing at No. 4. Finally, there was some bullets came whistling around by me pretty close, and I got down on the ground pretty close.

Q. Mr. Simmons, what direction were you from Mine Number 4 at that time, you say you were about a quarter of a mile away?

A. I don't know whether I can guess from the range of these mountains there at all about the directions, but I think I was nearly southwest.

Q. Were you, or were you not, upon a ridge or a hill?

A. Well, I was right up against that ridge.

Q. And what direction then from you were the men that were firing, the man firing from the woods, or where they were firing from?

A. They was something like east, a little bit to the southeast.

Q. Could you see any smoke of guns there?

A. Well, I don't remember about looking for smoke at all, but the guns was firing rapidly at both places.

Q. Firing towards the mine and from the mine?

A. I couldn't see how they was firing exactly, but then they was firing at both places.

Q. About how many shots did you hear first, I will ask you, from the woods?

A. I couldn't count it; it was just like pop-corn in a corn-popper, couldn't count the shots.

Q. Did you see the men that were in the woods?

A. Just saw a gang of men, that was all.

Q. About how many did there appear to be?

A. I couldn't tell that; there was just a big squad of
993 men; some in behind building, woods, trees, they was just scattered around; you could just see them occasionally.

Q. They were about how far from you?

A. About a quarter of a mile.

Q. From you? A. Yes, sir.

Q. Were they on a higher ground than you, or were you on higher ground? A. We was all on kind of a level.

Q. Describe what the men were doing there that you saw?

A. I couldn't say exactly; I could just see the men you know that's all; and I couldn't tell anything about what they was doing only I could hear the gun-fire.

Q. Could you see the men behind the guns?

A. Well, probably if I had looked and tried to have seen them, a thing of that kind, I might have seen them behind but I don't remember about that; I was just interested in seeing how things was going.

Q. What do you mean by "things"?

A. Well, how the shooting and the battle was going; curiosity led me down there.

Q. Were you armed? A. No, sir.

Q. Didn't you have any gun yourself? A. No, sir.

Q. Now was that the only squad of men in the woods that were firing at that time?

A. There was men all over the whole country around there.

994 Q. Firing? A. No, sir.

Q. I mean was that the only squad of men that were firing at that particular time you mention now?

A. The only ones I heard.

Q. About what time in the forenoon was it?

A. That must have been noon or afternoon, I believe; that must have been in the afternoon.

Q. What time did you leave Hartford to go over there?
A. About 11:00 o'clock.
Q. About 11:00 o'clock? A. Yes, sir.
Q. And how did you get over there?
A. Walked down the railroad.
Q. Anybody go with you? A. Yes, sir.
Q Who was it?
A. Fate Romine, and somebody else that I don't believe I can call to mind who it was.
Q. How long did it take you to walk down to the point where you stopped and witnessed the battle?
A. Something like forty or fifty minutes.
Q. Did you hear any guns before you stopped at that point? A. Yes, sir, we could hear guns from Hartford.
Q. Could you estimate, Mr. Simmons, if you can, I wish you would give your best estimate of about the number of guns that you heard fired altogether?
A. I couldn't do that. I couldn't do that all.
Q. Why?
A. They was too thick and fast and they was
995 fired off and on pretty well all day.
Q. What time in the forenoon, if you did hear them in the forenoon while you were in Hartford, did you first hear guns firing in that direction?
A. Well, I don't remember about that; don't remember about when I heard the first guns fired. The biggest thing that I heard was an explosion, that was what attracted my attention more than anything else.
Q. What kind of an explosion?
A. It seemed to be a dynamite explosion.
Q. Where were you when you heard that?
A. I was at home.
Q. In what direction was that?
A. That was towards the mines.
Q. And did you go down to see what the explosion was when you got over there?
A. Just my curiosity led me over there.
Q. I mean did you go to the place where the explosion had occurred that day?
A. I didn't know where it occurred I couldn't tell what it was; or where it occurred.
Q. Did you see any smoke or burning buildings or anything of that kind? A. Yes, sir.
Q. What time did you see that?

A. Well, from about eleven o'clock on, I could see a smoke raise up.

Q. What was it burning?

A. Well, they was tipples burning.

996 Q. What tipples?

A. Tipple at Mammoth Vein; there was two tipples there that burned; and then there was dwelling houses, some dwelling houses.

Q. Did the tipple at No. 4, Prairie Creek, burn?

A. Yes, sir.

Q. Could you tell the number of houses and tipples were burned?

A. I couldn't tell the number of houses for I never was in the camp after the burning at all. That is, I have never been out where the dwelling was. I seen all the tipples that was burned; that is, all up in that vicinity. I seen No. 4 and the Mammoth Vein; that is the two Mammoth Vein tipples; and I never paid any attention to the Dallas tipple; and the Huffman tipple was afire but they put that out; that is the Central.

Q. That was operated at the time by the Central Coal and Coke Company? A. Central Coal & Coke Company.

Q. But the property belonged to the Bache-Denman Coal Company?

A. I don't know about that but I think it belonged to the Central.

Q. But it was the old Huffman mine? A. Yes, sir.

Q. Do you know who bought the Hoffman mine?

A. I couldn't tell anything about that any further. While it was in the hands of the Receiver I done a little business with those people.

Q. Who was the receiver of that mine?

A. I don't know, but Bill Brown was boss there.

Q. Wasn't Bennett Brown the receiver?

A. Might have been, Bennett and Bill was brothers.

Q. You don't know what interest, if any, the Bache-

997 Denman Company had in that mine? A. No, sir.

Q. That mine, however, was put out? A. Yes, sir.

Q. But that mine was burning that day?

A. It was set afire.

Q. Now, Mr. Simmons, who were the men that were doing the firing in the woods; I don't mean to ask you their names but I want to ask you if you knew whether or not they were miners? A. It was a mixed-up gang.

Q. Any miners in it?

A. It was a mixed-up gang, the whole thing was in it.

Q. What do you mean by "the whole thing"?

A. I seen men that wasn't miners nor wasn't implicated or interested in any way at all in the mines.

Q. Doing any firing? A. During the day.

Q. Did you see any miners doing any firing?

A. No, sir, I don't know who it was.

Q. Were you close enough to the men that were doing the shooting to recognize who they were?

A. Oh, no, I couldn't do that.

Q. Then you couldn't tell, could you, whether they were union miners or not?

A. No, I couldn't tell whether they were union miners that were firing or whether they were citizens.

Q. During the day, you did see some people there who were not union miners? A. Yes, sir.

998 Q. Who were they?

A. Fate Romine for one, went down there with me; he had nothing to do on either side, curiosity led him that way.

Q. Did you have anything to do on either side?

A. No, sir.

Q. What sides do you refer to; what sides do you mean when you refer to either side?

A. I mean union and non-union.

Q. Did you see any officers around there?

A. Not that day.

Q. They have officers down there, don't they?

A. Yes, sir.

Q. How many men, Mr. Simmons, do you think you saw that day from the time you left Hartford until you got back?

A. I don't know, there was quite a crowd of men.

Q. Give your best estimate as to the number, giving your best judgment about it as to the number of men you saw during the time that you made that trip.

A. Well, there must have been anyway 200 or more, that is, that I seen; I don't know how many more there was, but I must have seen as many as 200, first and last.

Q. State whether or not those men were armed.

A. Sometimes there would be a man armed and sometimes a man that wasn't armed.

Q. Could you estimate as best you can, about the number of armed men that you saw during the day over there on that trip?

A. No, sir, I never noticed very many armed; the crowd that I was in was curiosity-seekers; they was all along that

road up there; sometimes there would be a man passing along with a gun.

999 Q. Was anybody engaged with you in your lumber business? A. No, sir.

Q. Do you know Doc Moore? A. Yes, sir.

Q. Was he working with you? A. Yes, sir.

Q. Was he a coal-miner? A. Driver.

Q. Where was he on that morning, if you know?

A. I don't know, but he was working for me. I don't know whether he was working that day or not.

Q. Did you work any that day?

A. No, sir; I had some teams at work in the field that day and I don't know whether he drove one or not. I had two men working for me at that time, him and Mr. Wheatley. I don't know whether Doc Moore was working that day or whether he was off, I couldn't tell; I don't remember.

Q. State whether or not you attended any meeting of any kind on the night before, or the day before, or two or three days before this battle?

A. I attended two meetings; one at night just about dusk, and one in the evening, but I don't remember just how long before this.

Q. I wish you would tell me where the meeting was that was held about dusk?

A. That was at the Bolen pond, somewhere about where the Apostolic mission is now.

Q. What kind of meeting was that?

A. Well, sir, I couldn't tell.

1000 Q. Who called the meeting?

A. I couldn't tell, just a meeting there.

Q. Who was present there at that meeting?

A. There was a lot of miners present.

Q. Did anybody act as chairman of the meeting, or president of the meeting?

A. Yes, sir, we had a chairman there.

Q. Who was he?

A. I don't know who the chairman was; I don't remember.

Q. State whether or not anybody made any speeches at that meeting?

A. I don't remember in particular, but one man that spoke anything, James Slankard was the only speaker.

Q. He was supposed to be the constable there wasn't he?

A. Yes, sir, he was the constable.

Q. Where was that meeting held?

A. At the Bolen pond.
Q. Is that in the town of Hartford? A. Yes, sir.
Q. And can you tell whether that was the evening before the battle?
A. No, sir, I can't, it was sometime close before.
Q. About how many men were present at that meeting?
A. I expect there was two or three hundred.
Q. What was the object of that meeting, Mr. Simmons?
A. Well, I suppose it was to get those non-union men out of 4.
Q. Was the matter discussed by anybody?
A. It was discussed, but I don't remember anyone at all but James Slankard.
1001 Q. Did he say anything about getting those men out by force?
A. If I am not mistaken, they had raised trouble, the non-union men had raised trouble in Beulah camp, and he said he would lead the way to put a stop to it, but I don't know anything further than that; don't remember anything further.
Q. What did he say, if anything, as to what he meant by leading the way to put a stop to it?
A. I don't remember, only that he would lead the way to put a stop to those men coming into town and causing trouble, shooting.
Q. That was James Slankard? A. Yes, sir.
Q. The constable at Hartford? A. At Hartford.
Q. That was either the day before or the evening before the day of the battle?
A. It was just a short time before; some of the non-union men had come into the camp and shot into the houses and caused quite a disturbance.
Q. That was the information given by Slankard?
A. The object of the meeting seemed to be to stop these folks coming into the camp and shooting it up.
Q. How were they going to stop it?
A. I don't know how, but he would lead the way to put a stop to it.
Q. Anybody else make a speech and explain what they meant by leading the way to put a stop to it?
A. Mr. Charley Robinson spoke some and I don't remember but a very little about his speech at all.
1002 Q. Do you remember the substance of it, as to whether or not he said anything about destroying the mine and the camp of the "scabs"?
A. Not destroying, but they were going to put a stop to it.
Q. Going to put a stop to it? A. Yes, sir.

Q. And the way was to be led by Jim Slankard, according to what he said?

A. Yes, sir, he would lead the way to stop the tear up of the camp.

Q. Did anybody in the meeting say where they were going to lead the way to?

A. No, sir, if they did I don't remember.

Q. You were there? A. Yes, sir.

Q. And you were listening pretty well to what took place?

A Well, I expect I was listening then, but that has been a long time ago and I was more of a curiosity-seeker than I was for anything else anyhow. It wasn't in my line of business so very much.

Q. Who invited you to go to the meeting?

A. I don't know that anyone at all invited me, I just went; it was an open meeting; I just heard about it and went.

Q. Now, as to the other meeting, where was that?

A. That was at the ball-park or the grandstand by the ball park.

Q. Did they have a chairman at that meeting?

A. I don't remember whether they did or did not; I think though they did.

1003 Q. Anybody make any speeches at that meeting?

A. There was only one speech made that I know anything about that I remember; that is, I remember one man being up speaking.

Q. Who was that? A. Mr. McNamara, James.

Q. What did he say?

A. I couldn't tell you that; he was pretty warm.

Q. What do you mean by warm?

A. He wasn't in favor of those people working in the mines at 4.

Q. That is, he wasn't in favor of "scab" labor at 4?

A. It seemed they wasn't in favor of those people that had commenced making so much trouble down there, if they just let them alone, they would soon try to run the whole country.

Q. Then what was his suggestion as to what ought to be done with them, if anything?

A. I don't remember, there was a good bit of noise.

Q. To refresh your memory, was there anything said there by Jim McNamara as to a conversation over the telephone between him and Mr. Pete Stewart?

A. No, sir, I don't remember anything of that kind at all.

Q. How many people were at that meeting?

A. Well, there was a good big crowd.

Q. Give your best estimate of the number that you think were there.

A. There must have been 500 or 600 at that meeting.

Q. Do you know who called that meeting?

A. No, sir, don't remember now who called it.

Q. Was that the day before, or two days before, the battle?

1004 A. Don't know how long before; it was just as big, what you might call a mass-meeting; I think that is what they called it.

Q. Mass-meeting? A. Yes, sir.

Q. Were they, or were they not, miners?

A. They was miners and merchants and farmers.

Q. Can you give the name of any man who was not a miner, that was there, either merchant or farmer?

A. No, sir, I don't believe I can. I just remember seeing a mixed-up crowd there, all the whole country around there.

Q. Anybody else make any speeches besides Mr. McNamara?

A. Yes, sir, two or three spoke but I don't know who they was.

Q. I wish you would explain if you can—I don't want to lead you—the substance of Mr. McNamara's speech as near as you can give it, explaining what you mean by it being a warm speech.

A. He is a pretty warm member of the United Mine Workers, is all I can tell you. He believes his way good and strong.

Q. Was there any other non-union or "scab" mine in that community at that time, except this Bache-Denman mine?

A. Not that I know of.

Q. Did you see Jim McNamara on the day of the battle?

A. No, sir.

Q. Did you see Jim Slankard anywhere? A. No, sir.

Q. Do you know whether either of them was in command of either side at the battle?

A. Didn't see them, I couldn't tell you that.

Q. Do you know who was leading the union forces at the battle? A. No, sir.

1005 Q. Have you told, as near as you can recall now, every circumstance that happened on the day of the battle? A. Yes, sir.

Q. Do you know the difference between the sound of shot-guns and high-power rifles so as to tell whether the guns that you heard were high-powered rifles or shot-guns?

A. Well, I don't know, I have heard some pretty keen shots; they seemed to be keener than a shot-gun; I couldn't

tell what kind of gun though, might be just an ordinary Winchester.

Q. Let me ask you again so as to get it in my mind, what time it was that you left there?

A. It must have been somewhere near four o'clock or after.

Q. You spent something like from 12:00 until 4:00 o'clock in that neighborhood? A. Yes, sir.

Q. Did you walk around very much while you were there?

A. No, sir, I stayed in one place until the tipple was burned down and then I walked down to the tipple.

Q. The tipple at Number 4?

A. Yes, sir, and some of them objected to me going in there.

Q. Who objected? A. I don't know.

Q. Any "scab" men there when you got there?

A. No, sir, I never seen one of them at all."

The Court: Any cross examination?

Mr. Warrum: No, your Honor.

1006 JAKE RITCHIE, of lawful age, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. You have given the reporter your name?

A. Yes, sir.

Q. Do you have a cold?

A. I have, yes, sir, but I have been hoarse though, for five or six years.

Q. Do you think you can talk loud enough to have the last juror over here hear you?

A. Yes, sir, I think I can.

Q. Do your best, where do you live?

A. Where I live now?

Q. Yes. A. I live in Crawford County.

Q. What is your occupation? A. Farming.

Q. Where were you living in 1910?

A. I was living at Pairie Creek.

Q. What were you doing at Prairie Creek?

A. Tending to the mules for the Denman-Bache Coal Company.

Q. Did you attend the mules from 1910 to 1914 for the Bache-Denman Coal Company?

A. Yes, sir, I was off some during that time.

Q. During what period were you there with the company, attending the mules?

1007 A. 1913, I believe I was off.

Q. Off in 1913? A. Yes, sir.

Q. For what mines did you tend the mules?

A. For No. 4, and the Mammoth Vein.

Q. Prairie Creek No. 4? A. Yes, sir.

Q. And Mammoth Vein? A. Yes, sir.

Q. Did they have the mules for both mines in the same stable? A. Yes, sir.

Q. And you took care of the mules for both mines?

A. Yes, sir.

Q. At that time were the mines being operated union or non-union? A. Union.

Q. Were you a member of the union?

A. I believe I was the first, I won't say for sure.

Q. A member of the United Mine Workers of America?

A. I was when I first commenced.

Q. And you continued with the company when they went open shop? A. I was.

Q. You stayed out there and continued to work did you?

A. I came back about two or three months, when they started open shop, back there again.

Q. And when they started open shop you were working for them? A. Yes, sir, tending the mules.

Q. You remember when they began to mine on the

1008 open shop basis do you?

A. I don't remember just the dates.

Q. What year was it, approximately?

A. 1914, I believe.

Q. In what part of the year, the spring or the summer?

A. It was in the spring, the early spring I think, I am pretty sure it was.

Q. What were you doing on the day of the riot, on April 6th, 1914?

A. I was not doing anything more than tending to the mules.

Q. Will you describe what happened on that day,—what day of the week was it according to your recollection?

A. I don't remember, but I believe it was on Monday.

Q. Just state what happened on that day?

A. Well, they came over to No. 4, a mob of them, and run off,—I believe, what was there.

Q. Where were you at that time, were you at the mine, or somewhere else? A. I was over to the boarding house.

Q. You were at the boarding house? A. Yes, sir.

Q. Who run the boarding house? A. Andrew Beck.

Q. Andrew Beck, who is he?
A. He was the fellow that worked there.
Q. Worked for the Bache-Denman Company?
A. Yes, sir.
Q. Where was his house with reference to Prairie
1009 Creek, No. 4. A. Let's see, it would be southwest.
Q. That would be the fan house? A. Yes, sir.
Q. What they called "Googoo Eyes"? A. Yes, sir.
Q. What did you see from up there, Mr. Ritchie?
A. I see a group of men there around No. 4, that gathered at the school house and come down to No. 4.
Q. Now Googoo Eyes fan house was upon a hill, was it now? A. Yes, sir, back up from the boarding house.
Q. And you could see down over the valley including the mine property and the school house, could you?
A. Yes, sir, I could see from there.
Q. Did you see any men down there around the school house? A. Yes, sir.
Q. Were there a large number or small number?
A. There were a large number of them there.
Q. Did any of them come up to Andrew Beck's house, where you were? A. Yes, sir.
Q. Who came up there?
A. John Monick, and Lester Howard.
Q. What did they say to you?
A. They wanted to know if we had nerve enough to go down to No. 4 and meet the men down there or a committee.
Q. Meet the men down there or a committee?
A. Yes, sir.
Q. What did you tell them?
1010 A. We told them we did.
Q. Did you start down to meet the men or the committee? A. Yes, sir.
Q. Describe what happened?
A. We started down there, and we saw Elmer Searles coming, and men throwing at him.
Q. What were they throwing?
A. Anything they could get hold of, sulphur balls, or anything.
Q. Were they throwing rocks?
A. Sulphur balls and rocks is about the same thing.
Q. Was he running in your direction?
A. Our direction.
Q. What did you do then? A. We turned back then.
Q. Was the crowd running after him? A. Yes, sir.
Q. Was there very much of a crowd running after him?

A. Eight or ten, something like that.
Q. Where did Elmer Searles go, do you know?
A. He came on up to the boarding house, and went home later on. He lived a couple of hundred yards of the place.
Q. You didn't go down to meet the committee, or the crowd? A. No, sir.
Q. You know a man by the name of John Bumpus?
A. Yes, sir.
Q. Who was John Bumpus?
A. A fellow that farmed around there.
1011 Q. Where did he live?
A. Three or four hundred yards of there.
Q. Did his farm adjoin the mine property, come right next to it?
A. Yes, sir, the land he tended come right up to the mine.
Q. Did you see John Bumpus that day or that night?
A. Yes, sir, late that evening.
Q. Will you describe what happened when you saw him, or he saw you?
A. He came down there to Mr. Loper's and advised me not to stay there that night.
Q. You were staying at Mr. Loper's?
A. I were there at that time.
Q. Were you related to Mr. Loper? A. Yes, sir.
Q. What relation? A. Son-in-law of his.
Q. What did Mr. Bumpus say to you when he came over to Mr. Loper's to see you?
A. He came down there and told me he was sent by a committee, or something, I forget just the words he did say, and for me not to stay there that [nigh].
Q. He was sent by a committee to tell you not to stay there that night? A. Yes, sir.
Q. Did he mention any names in connection with that committee?
A. He mentioned Frank Scofield. I won't say that Frank told him to tell me.
1012 Q. Who was Frank Scofield?
A. He was a coal digger.
Q. A union coal digger? A. Yes, sir.
Q. A union miner at that time? A. Yes, sir.
Q. Did you know him personally? A. Yes sir.
Q. Did you leave there,—or did you stay there that night?
A. No, sir.
Q. Did anybody come to get you out of there or try to get you out?

A. There was another man came along [to] and told me to come over to his house and stay that night, that lived at Huntington.

Q. Who was that? A. Pet Loper.

Q. Is he any relation of O. T. Loper? A. Brother.

Q. Did he come over to see you about his brother too?

A. Yes, sir.

Q. Did you see Barnes beaten up?

A. I saw him directly after.

Q. Describe his condition?

A. Well, his head was cut, and some gashes, and when I seen him, I believe he was washing at that branch that comes out from the mine toward the boarding house, comes out from No. 3, where they pump water, and I told him not to wash in that water, it was poison, it was pit water, to go up to the house and wash.

1013 Q. Now, Mr. Ritchie, with reference to the visit of John Bumpus, did you see Frank Scofield out on the road? A. He was up near the road.

Q. He was back with those men? A. Yes, sir.

Q. When John Bumpus came up to warn you to get out of there? A. Yes, sir.

Q. Did you know anything about their hoisting a union flag on the tipple? A. I don't remember about that.

Q. Mr. Ritchie, did you ever work for Mr. Loper in that mine there? A. Yes, sir.

Q. When was that?

A. Just a short while before that; it happened two or three months.

Q. Were there any other men working there for him?

A. Yes, sir.

Q. How many?

A. Seven or eight or ten, something like that, just a small outfit.

Q. Was that being operated union or non-union?

A. Non-union.

Q. During that time was any effort made by the union to break up the operation of that mine? A. No, sir.

Q. Why not?

1014 Mr. Warrum: The defendants separately object to this as calling for an opinion and conclusion on the part of the witness.

The Court: What is the question?

Mr. Lucas: The question is, Mr. Lopers mine was being operated non-union and I asked him whether the union had

attempted to break up that mine, and he answered no, and the question now is, why not?

The Court: You ask him why not. Ask him now if he knows why not.

Q. Do you know why the union did not interfere with Mr. Loper's mine?

The Court: The question is, do you know, yes or no? Do you know?

The [Witnes]: Well, it was—

The Court: Answer it yes or no.

The Witness: How is that?

The Court: Do you know the reason?

The Witness: No, I don't know the reason.

Mr. Lucas: Mr. Ritchie, I read over your testimony to you this morning, did I not?

The Witness: Yes, sir.

Mr. Lucas: That is all.

Mr. Warrum: No, cross-examination.

The Court: Stand down.

(Witness excused)

S. B. McLaughlin, of lawful age, called as a witness on behalf of the plaintiffs, being first duly sworn, testified
1015 as follows:

Direct Examination

By Mr. Lucas:

Q. Give your full name to the reporter?

A. S. B. McLaughlin.

Q. Where do you live? A. I live here in the city.

Q. In 1914, did you have any connection with the Bache-Denman Coal Company at Prairie Creek? A. Yes, sir.

Q. What was that relationship?

A. I was employed by them to watch for them, night watchman at their mines at Prairie Creek.

Q. When did you go down there to act [at] night watchman?

A. I see from the record there it was the 4th of April, I [belive], 1914.

Q. By the way, I have just given you this book to read your previous testimony? A. Yes, sir.

Q. Who sent you down there? A. Mr. Cameron.

Q. Who is Mr. Cameron?

A. He was the general manager, I reckon; he was the man that employed me and two others that went down with me.

Q. Who were the other two?

A. E. E. Goddard, and H. P. Berry. Berry is dead now.

Q. Do you mean Mr. Berry or Ples Baker?

1016 A. Berry, he is dead now.

Q. What did he put you to doing, what duty?

A. Night watchman.

Q. What instructions did he give you?

A. He said he wanted some men he could depend on down there, that while he did not anticipate any danger, from the miners generally, that there might be some scalawag that might slip in and set fire to a building or blow it up.

Q. And he told you to watch about that?

A. Yes, sir.

Q. Did he give you any instructions about the use of fire arms?

A. He said he didn't want any gun men, he didn't think he would need them.

Q. If the riot was on Monday, April 6th, do you remember what day of the week you went down there?

A. Saturday previous to the Monday; that is, just before Monday.

Q. Will you describe what happened in connection with your going down to the mine?

A. When we got to the mine that night, it was getting dark, and there was a bunch of miners at the time. It seemed to me they were a little disturbed, and I went on over to the boarding house and got supper, and went on watch, and the next morning I went to Prairie Creek, depot there. Goddard had left his overcoat on the train the night before, and I went to see if I could hear of it, and when I got there I met some fellows near the depot, Clint Burris and Will Johnson. I knew Clint, but Johnson told me his name, and Clint began to talk to me, and I didn't know him at

1017 that time. He said I ought to know him, and he said I was night jailer when he was in jail over at Ft. Smith.

Q. Who told that to you? A. Clint Burris.

Q. And you recalled the time he was in jail at Ft. Smith?

A. Yes, sir, I remembered him then. He asked me if I come down to guard, and said I was too good a man to guard scabs and Will Johnson commenced to talk pretty sassy then, and I asked what his name was, and he said "Johnson", and

I said, "which one", and he said "Will", and a crowd began to gather, and I got out and went to the boarding house. I told them I expected to come in town again on Monday morning, I had some business here at the Court house, and I was going to move besides. I had just built a house and was going to move. Johnson said I had plenty of time, why not go on that train, and I told him that my overcoat was at the boarding house, and he said "You will have plenty of time to get it". I went off and didn't go back until the next morning.

Q. When this crowd gathered around you did you hear any threats? A. Yes, sir.

Q. What was their nature?

A. They said they could not run the mines over there, and asked me if there was anybody working and I said if there was I didn't know it. They said they should not run the mines under any condition, and I advised them and made the suggestion that I would not destroy the property, and then is when they said they should not run the mines under any consideration.

Q. Did any of them advise you, —

1018 A. Should not run on open shop plan under any consideration.

Q. Did any of them advise you to leave there?

A. Yes, sir.

Q. Who?

A. Burris and Johnson both, and that if I stayed there I would get hurt; they told me that trouble was going to happen on Monday and it did.

Q. They told you it was going to happen on Monday?

A. Yes, sir, that they were going to raid it the next day.

Q. On Monday did you see any of this same crowd?

A. Burris and Johnson were both there,—it looked like the same crowd, there was a considerable crowd there.

Q. Did they say anything to you about it that morning?

A. About the same thing, and Burris said he was glad to see me going in.

Q. Did he say why he was glad to see you going in?

A. Yes, sir, that they were going to attend to them that day.

Q. What did he say would happen to you if you stayed there?

A. That I might get hurt if I stayed and that he was glad I was leaving. It seems he was a friend of me.

Mr. Lucas: That is all.

Cross-Examination

By Mr. Warrum:

Q. You went over on Saturday and left on Monday?

A. Yes, sir.

Q. Did these men tell you that Mr. Bache had violated his contract with the union down there, and they did not
1019 think he ought to run open shop in violation of his contract?

A. No, they didn't tell me anything of that.

Q. Did they tell you they did not think he ought to be employing non-union men at his mine? A. No, sir.

Q. Just simply said they didn't want him to run his mine?

A. Said he should not run it open shop.

Q. They were men that had been employed, as you understood from their talk, that had been employed at the Bache-Denman mine? A. Yes, sir.

Q. Union men? A. Yes, sir.

Q. And were out of employment then? A. Yes, sir.

Q. Now when you went down there you were given a gun?

A. I was after I got there.

Q. And you testified on your former examination that there were two shifts, one day and one night shift?

A. Yes, sir.

Q. You were there Saturday and Sunday night?

A. Yes, sir.

Q. And left Monday? A. Yes, sir.

Q. And the mine had been opened Saturday?

A. I don't know whether they were opened Saturday or not.

Q. That is when you went there?

A. Yes, sir, I was there just Saturday night and Sunday night.

1020 Q. And they had two shifts of guards at that time?
A. Yes, sir.

Q. And you were on the night shift? A. Yes, sir.

Q. And is this your answer, there were four or five of us on the night shift? A. Yes, sir.

Q. And they were all armed with guns, were they not?

A. I think so, I had one.

Q. There were two Burns detectives there?

A. There were two men there from Kansas City, I understand they were.

Q. That is what you understood?

A. I understood they were.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused)

Mr. McDonough: We offer the deposition of WILLIAM THOMAS, taken in Clinton, Tennessee, and found on page 1332 of the former record.

"Q. Are you the son of Ewing Thomas?
A. Yes, sir.
Q. Sister of Mrs. Perry?
A. My half sister.
Q. Where did you live in the spring of 1914?
A. Briceville.
Q. And when did you first hear about going to
1021 Prairie Creek? Along in June somewhere.
Q. What now did you first hear? A. Mr. Eustis—
Q. What did he do?
A. He got my father to go over there.
Q. When did [you] father go out there?
A. About the first of June, the best I remember.
Q. Come back again? A. Yes, sir.
Q. When? A. About the first of July.
Q. Take anybody back with him?
A. Yes, took William Saunders and Andrew Dougherty and Mr. Dougherty, don't know what his name is, Ida Saunders—
Q. Saunders Wife?
A. Yes, sir, and Tom Perry and his wife and children.
Q. Who is Tom Perry's children?
A. My father's daughter.
Q. Your sister? A. Yes, sir.
Q. When did you go to Prairie Creek?
A. We went out there about the 10th of July.
Q. When did you get there?
A. I can't remember what time.
Q. You said your father came back about the first of July, when did he go?
A. Started back about the tenth of July.
1022 Q. How long did it take you to get there?
A. Three days and nights.
Q. When you got there where did you go to live?
A. In No. 3 camp.
Q. What did you do?
A. Worked in a boarding house waiting on a table.
Q. You work anywhere else? A. No, sir.
Q. How late did you work on the night before the trouble? A. Until about twelve o'clock.
Q. Then where did you sleep? A. In the cook room.
Q. What time did you wake up next morning?

A. About six o'clock.
Q. What did you do when you got up?
A. Began to fix the table.
Q. What time did you have breakfast?
A. About 6:30.
Q. Hear anything special around that time, and if so when? A. About 6:30 Charles Suttles come and told me.
Q. Come from where? A. From on guard duty.
Q. What did you hear?
A. Telling us about having a battle that night and shooting through the bib of his over-alls.
Q. Show you his over-alls? A. Yes, sir.
1023 Q. What did he say [cause] that?
A. Shot went through it.
Q. Then what did you do then? Then where did you go after that? A. Stayed there in the room until breakfast.
Q. Who was there for breakfast?
A. I don't know, several.
Q. Men that worked around the mines?
A. Yes, sir.
Q. Where you go after that? A. To the store.
Q. Where did you go? A. Store.
Q. Hear anything there? A. Few men working.
Q. Who else [see] there?
A. I—didn't many come along.
Q. Hear any shooting?
A. No, sir, just talking about being a few shots that night.
Q. Where did you go next and what did you hear?
A. Heard some shots about half an hour from that?
Q. What time? A. About seven o'clock.
Q. Where was that? A. All around.
Q. From inside? A. Outside.
Q. Could you tell where the bullets were coming
1024 from? A. Coming from all directions.
Q. You see any of the strike?
A. See dirt come up, come up from the bullets where they hit.
Q. Strike near where you were. A. All around me.
Q. Who else saw that at that time?
A. Several of the fellows around the store there.
Q. Where did you go then? A. Started home.
Q. Who was with you the time you started home?
A. My sister and John Martin.
Q. Where did you go then?
A. They went up the hollow and I went the road.
Q. Hear any shooting as you went up the road?
A. Yes, sir.

Q. Who were shooting? A. Union men.
Q. Where were they?
A. On the outside, over in Frog Town and all around.
Q. Could you see men outside?
A. I seed four or five, looked like a bunch.
Q. Where were they?
A. North of the mines.
Q. See anybody with guns? A. Yes, sir.
Q. See any smoke from guns? A. Yes, sir.
1025 Q. Where was that? A. Where they was shooting.
Q. There around the mines, company men shooting?
A. No, sir, not them.
Q. You see any of these men shoot?
A. Not until I showed a man the crowd.
Q. When did that happen?
A. I was coming up the road and a woman followed to go back and get her husband and I started back and I seed some fellows coming, and I didn't know if it was her husband or not, I said yonder he comes now and went on, I stopped to look awhile and seed that crowd of men over there.
Q. Over where? A. North of the mines.
Q. Inside of the company's property?
A. Yes, and I showed it to one of the guards.
Q. What guard? A. I don't know his name.
Q. Where coming from? A. No. 3 camp.
Q. What did he do when you showed him these men?
A. Begun shooting.
Q. What was he shooting with?
A. Long range gun that he had in his hand.
Q. Then where did you go? A. To the house.
Q. What did the men do when he begun shooting?
1026 A. Got back across the fence, on back yon way.
Q. Did they have guns? A. Yes, sir.
Q. You see them shoot back? A. Yes, shot back.
Q. Then where did you go? A. Into the house.
Q. Who did you find there?
A. My father and Mr. Johnson and my mother.
Q. Who else?
A. If I am not mistaken Mr. Dougherty was there.
Q. Your sister there?
A. No, sir not got there yet.
Q. When did she get there? A. In about five minutes.
Q. What did you do then? A. Took to the ridge.
Q. Who took you to the ridge? A. My father.
Q. Your mother go along? A. Yes, sir.
Q. She walk? A. No, sir, packed her.
Q. Who carried her? A. My father.

Q. What was the matter with her, you know?
A. I don't know.
1027 Q. Sick before that? A. Yes, sir, weakly. Sick.
Q. Where was she when you come back to the house?
A. Laying down on the floor.
Q. On her back? A. On her face.
Q. What was she doing? A. Crying.
Q. Then you say you went—where did you go from there with your father? A. Up on the ridge.
Q. Where did you go from there? A. In under a bluff.
Q. How long did you stay there?
A. We stayed until eleven o'clock.
Q. Then did you hear anything while you were up there?
A. Yes, plenty of shots.
Q. Anything else? A. Yes, like a Dynamite going off.
Q. What time was that? A. [11;30] or 12 o'clock.
Q. That after you left the bluff?
A. No, sir, while we was there?
[A.] How long did you stay there?
A. Until about one o'clock.
Q. You know absolutely what time it was?
A. No, sir.
1028 Q. Look at a watch? A. No, sir.
Q. Guessing at it? A. Yes, sir.
Q. The dynamite went off one hour or two hours before you left there? A. Yes, sir.
Q. How did you come to leave?
A. Men come there and told us, told us to go with them and they would take us out.
Q. Anything else said when they got there?
A. Asked us what we were doing there and how we come there, how long we had been there and what we done with our guns, said they would like to find them, asked where we put them and that's all I can think of, said to go with them, they would take us out.
Q. Did you go with them? A. Yes, sir.
Q. Where did you go? A. Hartford.
Q. Which way did you go when you first started?
A. Top of the hill, right out the point.
Q. See anybody as you went along?
A. Not until we got out of the woods, near to No. 3, tipple.
Q. What did you see then?
A. Men laying around the bank.
Q. What were [—] doing? A. Laying there.
1029 Q. Have anything with them? A. Guns.
Q. Have any marks on them? A. No, sir.
Q. Anything peculiar about them? A. No, sir.

Q. Have anything tied around their arms?
A. Yes, white handkerchiefs tied around their left arms.
Q. What were they doing with the guns?
A. Some of them were shooting.
Q. What were the rest doing? A. Laying there.
Q. See any other people going around?
A. Yes, running all around, some going in a run.
Q. You hear them talking? A. No, sir.
Q. Hear anybody talk to them? A. No, sir.
Q. Anybody come along with mules?
A. Yes, a fellow come up with a mule had a sack and he gave some ammunition and asked others if they had plenty.
Q. You see any ammunition?
A. I seen something I supposed to be ammunition.
Q. How close were you to them?
A. Talking distance to him.
Q. And were you gone when they came down the bank?
A. No, sir, shooting and I kept behind the bank until they quit.
1030 Q. How long? A. Half an hour I suppose.
Q. Then where did you go? A. To a spring.
Q. Which direction were they shooting?
A. In towards the camps.
Q. Said you went by No. 3 tipple, what condition was that in. A. Burning.
Q. Burning hard?
A. Falling in and the grass around catched afire and we had to go around it.
Q. Go by that? A. Yes, sir.
Q. What did you come to next?
A. Went to the spring from there.
Q. See anybody at all? A. I met them all along.
Q. How many men did you see at the spring?
A. I guess 75 there.
Q. Did any of them have guns?
A. Some of them had guns.
Q. Any of them have white handkerchiefs around their arms? A. No one only the two that had us.
Q. Who else did you see there?
A. Seen several other fellows there.
Q. Did any of them have guns?
A. Some of them did and some didn't.
1031 Q. What kind? A. I don't know what kind of guns.
Q. Where did you go from there?
A. Went on to Hartford.
Q. Anything special happen that you remember?

A. Yes, sitting there and my father laid my mother down, thought she was dying, and had her head laying in his lap and I was standing against a tree and one man said it would not take him long to go over there and smack that grey headed son of a bitch over.

Q. Who said that? A. A man standing by me.

Q. Man in your crowd?

A. No, sir, belonged to the union.

Q. Have a gun? A. No, sir.

Q. Anything else happen there you remember?

A. Some man there and his wife and four or five children went with us and he had on his mine clothes and they told him they knowed him that they would give him a chance for his life, if he stayed until another crowd got there they would kill him, said they would stretch him to the best limb that would bear his weight.

Q. Then what happened?

A. Said you see that road there hit it and pointed to a tree and told him to hit it for that tree.

Q. What did he do? A. Lit out.

1032 Q. What direction? A. East.

Q. Go to the tree? A. Yes, sir.

Q. How, walked? A. Walked, running, kind of a trot.

Q. Then what did you do?

A. Took us, started to Hartford with us.

Q. You walk or ride?

A. Walked, put the women and children in a hack and took them down.

Q. You meet any people on the road?

A. Yes, lots of them.

Q. See anybody with guns?

A. Yes, all the people nearly had guns.

Q. Which way were they going?

A. Toward No. 3 camp.

Q. When you got to Hartford what did you do?

A. Took us there and put us in a old store house there.

Q. Where did you go first?

A. In a store house and took my mother up stairs, and got her a room—and sent after a doctor for her.

Q. Keep her in that room?

A. Yes, until the next day about twelve o'clock.

Q. Where did you go then?

A. Took her to another store house and put us all together.

Q. That the same place you went on Friday?

1033 A. Changed.

Q. Not altogether on Friday? A. No, sir.

Q. How long did you stay in the other building?
A. One night.
Q. Were you there all the time?
A. I was there that night.
Q. You go out at all on Saturday?
A. Yes, to a place to get my father a shirt.
Q. What place? A. Next building before they moved us.
Q. Go by yourself? A. Mayor of the town went with us.
Q. How do you know it was the mayor of the town?
A. Because they called him Mayor of the town.
Q. See any people going along?
A. Crowded up all along.
Q. Who were they?
A. Union men crowded up around the door, and had to keep them pushed back to keep them from coming in on us and before we went off the Mayor of the town said if anybody said anything to me not to say anything back to them, they were all drinking and if I said a word they would kill us all.
Q. You got a shirt for your father? A. Yes, sir.
Q. What did you do then?
A. Went back where he was at.
1034 Q. You know whether the men in Hartford knew your father had been back to Coal Creek and come back again?
A. I don't know if they knew he had been back there and come back or not.
Q. How long did you stay there in the store house?
A. In the last place we stayed there until Sunday morning.
Q. Where did you go then?
A. Put us on the train and started us back.
Q. What time did they put you on the train?
A. 6:30 I believe.
Q. Have your breakfast? A. No, sir.
Q. Where did you get any?
A. Not until we got in Little Rock.
Q. How long was that? A. All day.
Q. What did you get to eat at Little Rock?
A. Don't remember.
Q. Who got it for you? A. My father bought it.
Q. When did you get home? A. We got home on—
Q. How many days?
A. Three days from the time we started from there.
Q. You know who paid your fare?
A. No, sir, the Mayor of the Town got the tickets.
Q. Say anything when he gave you tickets as to why
1035 he sent you away? A. No, sir, I didn't.
Q. You mean you didn't hear him? A. No, sir.

Q. When you came down to the spring you said there was some men there, you recognize any of them know the name of any of them? A. No, sir.

Q. Ever seen any of the men before you saw at the spring? A. No, sir, not only what was with us.

Q. The new ones?

A. No, sir, didn't know any of the new ones at all."

Mr. Grant: We omit all of the cross-examination down to page 1341, the following:

"Q. You know the name of a single man you saw on the 17th day of July, 1914, from the time you got out of bed that morning until you left the section of the country in which the mine was located, where you were employed at the boarding house, except those that went away with you, that you know? A. No, sir.

Q. You don't know whether they belong to a union or whether they were non-union, do you?

A. No, sir, not outside, I don't know only what they told me.

Q. Now, the people you [say] along the road, many women and children out there, wasn't there? A. Yes, men.

Q. Wasn't there women and children? A. Yes, sir.

1036 Q. Over that entire country? A. Yes, sir.

Q. [1500 or 200] people scattered over that country?

A. No, sir, not that many.

Q. How many was there?

A. Was not any women where they were shooting at all.

Q. Any at the spring or well?

A. Not there, at the house below the spring some there.

Q. Where did you first strike the crowd going in the direction of the mines and coming back from that direction when did you intercept that line?

A. On the road to Hartford, met crowds along the road.

Q. How were they traveling?

A. Going toward No. 3 camp.

Q. Were they in wagons, buggies, horse back or afoot?

A. Some in wagons, in buggies and several afoot, every way."

Now, I will skip from there down to page 1350 and offer the following cross-examination.

"Q. Were you ever in the house or office down at the mine where they kept their supply of arms and ammunition?

A. No further than the door.

Q. About how many hundred rifles have in there?

A. Didn't have a hundred I don't think, I don't know how many.
Q. Whole room full, didn't they?
A. Not when I looked in there.
Q. Didn't they have the boxes of ammunition?
A. Boxes of something I didn't examine to see what.
1037 Q. You there when one of the guards shot two others?
A. No, sir, don't think I was."

Mr. Grant: We waive the balance of the cross-examination.

Mr. McDonough: We offer the cross examination which has been omitted by Mr. Grant.

(Reading) "Cross-examination

By Mr. Covington.
Q. You know all of the men that was employed at the mine where you were employed? A. No, sir.
Q. How many were you acquainted with?
A. Just what went from here out there is all.
Q. And you could meet them and not know who they were?
A. In that country—I would know them in that county if I met them.
Q. Know them all? A. Yes, sir.
Q. You work at the mine? A. Boarding house.
Q. Did all of the employees there board at that place?
A. No, sir, not all of them.
Q. How did you get acquainted with those that didn't [—].
A. Some I didn't get acquainted with, several of them.
Q. You have been talking about union men, answering union men [dis] so and so, now name those union men you [say] are talking about, and what you mean by the word union?
A. They have got an order, they belong to the union
1038 is what makes them call that I reckon.
Q. You know any of them? A. No, sir.
Q. Why do you say that?
A. Altogether with the union men.
Q. You don't know there was a single union man in that crowd do you?
A. I don't know for sure they said they were.
Q. Who said it? A. They did.
Q. Who did? A. The men that were outside.
Q. The men told you they were union men? A. Yes, sir.
Q. How did they come to approach that subject to you?

A. Told it on their own account.
Q. Just stood up and said it?
A. Telling what we ought to be then.
Q. Where were you then? A. Hartford.
Q. You talked the matter over at Hartford?
A. They talked it over with me.
Q. That is the first time you had mentioned it?
A. No, sir, all along.
Q. All along the line? A. Yes, sir.
Q. Your father hear the same thing you did?
1039 A. I reckon he did.
Q. Your sister hear the same?
A. About the union that I did, yes.
Q. You say four or five shots were fired early in the morning?
A. I never heard the first shots, I never heard it at three or four o'clock, I never heard any of that at all.
Q. Didn't hear the first shots alleged to have been fired at that time? A. No, sir.
Q. Now did they say what union they belonged to?
A. Local union they said.
Q. They tell you the number of the Local Union?
A. No, sir.
Q. State whether it had a number or not?
A. Never said.
Q. Did you ever see any men that said they belonged to the union before you went out there?
A. No, sir, a few through this country here.
Q. Can you tell one when you see him? A. No, sir.
Q. Tell a union man when you see him? A. No, sir."

* * * * *

"Q. Any effort [mad] to kill you, if so who did it?
A. Not along the road they didn't.
Q. Was any white handkerchiefs tied around the arms of those you met on the road to Hartford? A. A few.
1040 Q. About how many?
A. Near 75 of them I guess, I would not say for sure.
Q. The women they had white handkerchiefs tied around their arms also?
A. I don't remember any handkerchiefs around the women's arms at all.
Q. Looking at them were you not?
A. Looking at them as I passed.
Q. Didn't the ladies that had on dark dresses have white handkerchiefs and only those that had on white waists didn't have handkerchiefs?

A. Don't remember what sort of clothes they had on at all.

Q. See any white handkerchiefs in the town of Hartford?

A. Not only the fellows that went with us.

Q. Those fellows on the side of the mountain go into Hartford? A. Yes, took us into Hartford.

Q. Those two men with white handkerchiefs on their arms? A. Yes, sir.

Q. You know the name of the man that drove the wagon?

A. No, sir, said he was sheriff of the [country] and a preacher.

Q. He said he was a preacher did he? A. Yes, sir.

Q. And sheriff of the county? A. Yes, sir.

Q. Tall man wasn't he? A. Yes, sir.

1041 Q. Light complected?

A. I don't know what complexion.

Q. Had a gun in the wagon didn't he?

A. Yes, and a pistol buckled around him.

Q. Certain of that as about everything else you have testified to, you say he had a pistol buckled around him.

A. Yes, sir.

Q. Did your father take you out there or someone else induce you to go? A. My father took me, got me to go.

Q. Father pay your way? A. Yes, sir.

Q. Pay his own way? A. No, sir, I don't think he did.

Q. He paid the railroad fare for your mother?

A. No, sir, they paid it for him and he paid them when he got there.

Q. Didn't pay for you and your mother?

A. Yes, they paid.

Q. And you paid them back? A. Yes, sir.

Q. That the way of it? A. Yes, sir.

Q. You know what kind of a place you were going to?

A. I knowed we were going to open shop mines.

Q. Told you that? A. Yes, sir.

1042 Q. You testify to what your father said about that?

A. He said it was an open shop mine, didn't seem to be any trouble there at all the way it was working then.

Q. You left here on the 10th and were three days and nights getting out there? A. Yes, sir.

Q. That was the first time you had been in that section of the country? A. Yes, sir.

Q. You were not acquainted with anyone except that that went with you? A. That's all.

Q. Now in four days time you so familiarized yourself with the faces and personal appearance of the employees of

that mine that you say you would recognize the majority of them?

A. No, sir would what went out there with me, that's all.

Q. When you went down to the mine that morning about seven o'clock, I believe you say, who went with you?

A. 6:30 or 7, I was already there I didn't have to go.

Q. What were you doing there?

A. Working in the boarding house.

Q. How far was the boarding house from the tip?

A. As close as from here to the depot, I don't know how far, right at it, very near.

Q. Where did you get with your sister that morning?

A. There at the store.

Q. How far is the store from the boarding house?

1043 A. In talking distance of the boarding house.

Q. What did you do out there at the store?

A. Didn't do anything, just went out there.

Q. What was your business?

A. I think I went after a sack of smoking tobacco.

Q. Carry Mr. Martin along with you to get that?

A. No, sir.

Q. You meet at the store?

A. No, sir, the store was already open.

Q. He was just out there like you were, that it?

A. Mr. Martin, you mean with my sister?

Q. Yes.

A. They just come there when I got there.

Q. Who did you mean by they?

A. Mr. Martin and my sister.

Q. After they arrived where did you go?

A. Stayed there and talked a little while and the shooting took place and we started on home.

Q. Any shooting going on about the time your sister and Mr. Martin arrived?

A. Not at that time commenced in about twenty minutes best I could recollect."

The Court: How much more of the cross-examination?

Mr. McDonough: Three or four pages.

The Court: We will suspend until two o'clock.

(Whereupon a recess was taken until 2:00 o'clock P. M.)

2 P. M.
After Recess.

1044 The Court: Proceed with the trial.

Mr. McDonough: I will continue the reading of the deposition of Mr. William Thomas:

"Q. Any shooting going on about the time your sister and Mr. Martin arrived?
A. Not at that time, commenced in about twenty minutes, best I could recollect.
Q. During that 20 minutes what did you and your sister and Mr. Martin discuss?
A. I don't know what we was talking about now.
Q. Was not talking about fighting? A. No, sir.
Q. Nor arming yourselves and going out to fight?
A. Don't know what we was talking about.
Q. Go straight from there to your home?
A. I went around the road, they went the hollow.
Q. What road?
A. The dirt road around toward No. 3 camp.
Q. That road run in what direction from the store where you were? A. Kind of south of the mine.
Q. Toward this tipple you say was afire when you left there? A. Yes, toward No. 3 tip.
Q. How close were you to this No. 3 tipple at the nearest point of the road you were traveling on?
A. I never seen the tip burning until we went out on the bluff and they was taking us to Hartford.
1045 Q. That was the first time you ever saw that tipple, when it was afire?
A. Yes, when they started to take us to Hartford.
Q. You lived in that boarding house four days and never seen that tipple? A. Just at a distance is all, top of it.
Q. How close was this road you traveled going from the store on the 17th, back home how close did it approach the burning tipple?
A. I don't know, never went the road until I got home about a half a mile to the tipple was as close as I was to it.
Q. Where did you see some men? A. North of the mines.
Q. How many?
A. Didn't count them, don't know how many.
Q. About? A. Looked like ten or twelve or more.
Q. Doing anything? A. Shooting.
Q. At what? A. In the camp, at us I reckon.
Q. Any shooting going on from the camp?

A. Been two or three shots fired out of the camp at that time, did not count them and did not shoot.

Q. Wasn't the United States Marshals doing lots of shooting at that time?

A. No, sir, in camp.

1046 Q. Where were they doing that?

A. Were not shooting at that time nowhere.

Q. You say you saw Mr. Suttles?

A. Yes, that morning.

Q. What time did he get to the boarding house that morning? A. About 6.30.

Q. You examined his overalls and saw the bullet hole?

A. No, sir, never examined them, he showed me.

Q. You looked at them? A. Yes, sir.

Q. Not a bit excited about it? A. No, sir.

Q. Calm as he could be? A. Yes, sir.

Q. Have a gun with him?

A. No, sir, not at that time.

Q. Now he came there about 6.30, how long did it take him to get through breakfast?

A. I don't know, didn't time him and don't know how long he was in there, may be twenty minutes or thirty minutes, don't know.

Q. Where did he go after he got done eating?

A. I don't know.

Q. Leave the boarding house? A. Yes, sir.

Q. Anyone with him when he came?

A. No, sir, best I can recollect he was by himself.

1047 Q. How many men took breakfast at that boarding house that morning?

A. I don't know, never counted them.

Q. About how many?

A. Would not say for sure how many.

Q. What time you say you got up that morning?

A. About six o'clock.

Q. And had breakfast ready at 6.30?

A. I was not cooking, another one done that, I got up to set the table.

Q. Up to that time you had heard nothing out of the ordinary? A. No, sir.

Q. Didn't know anything about the matter until Mr. Suttles came in with a hole shot in his overalls? A. No, sir.

Q. Will you stand up there and indicate just where the overalls were perforated with the bullet?

A. I can't say for sure where it went to.

(Witness stands up and shows where the bullet went through.)

Q. It came to a line just below the point of the shoulders, drawing a line from the point of the shoulders from one to the other how far below that line did Suttles' overalls extend?

A. Top of his overalls came about even with under his arms.

Q. Which side of the overalls did the bullet pass through?

A. Would not say for sure which side now, I don't know.

Q. Have on any shirt? A. Yes, sir.

1048 Q. Shirt have a hole in it? A. No, sir.

Q. How big was the hole?

A. I don't know, I never tried to measure to see.

Q. Give some idea, you say you looked at it?

A. About the size of a hole in a cartridge hull I guess.

Q. You never see a hole made in clothing that way with a bullet?

A. That's the first one I ever seen through clothing with a bullet.

Q. Just one hole? A. Yes, sir.

Q. Could you tell whether it came in from the back or front by looking at it? A. No, sir.

Q. His shirt or arms above the elbow were not disturbed any way you could see? A. No, sir.

Q. Just a hole in his overalls? A. Yes, sir.

Q. That the first intimation you had of anything wrong?

A. Yes, sir.

Q. And you stood around after you went to the store and talked a considerable length of time with your sister and Mr. Martin? A. Yes, sir.

Q. The shooting opened up and the bullets began to ring around you and you started? A. I started then, yes.

1049 Q. Up to the time you left your home to go on the hill— A. I never stayed at home at all.

Q. Did you go to your father's house that morning?

A. Yes, when I left down there I did.

Q. I will say then, from the time you left your father's house and went on the hill in company with him and others, how many shots you say had been fired from the mine down there by those around the tipple? A. I don't know.

Q. You said until you left the store probably two or three?

A. That many or more, I said.

Q. Mr. Thomas, didn't you know that the company's guards had been shooting from that stockade from just about

the time you mentioned, about seven o'clock, and continued to shoot there until the time you went out on the mountain?

A. It was about 6.30 when they commenced shooting down there.

Q. You mean shooting from the mine or outside?

A. Outside into the inside.

Q. How do you know they were shooting into the mine not down there at the time at all?

A. I was down there when they first commenced shooting.

Q. At the mine proper? A. At the store.

Q. Just at the store? A. Yes, sir.

Q. Didn't you and your sister and Mr. Martin go right in behind the boilers there to see if you couldn't ascertain the whereabouts of Mrs. Perry's husband, didn't you
1050 do that? A. No, sir, went right back the road.

Q. You see anybody along the road?

A. I seed several men along the road.

Q. Have guns? A. Some of them did.

Q. About how many?

A. I don't know how many, some few of them.

Q. Did you ever work in the mines? A. No, sir.

Q. Never in one in your life? A. Yes, been in there.

Q. Don't know anything about the work? A. No, sir.

Q. What brought you here today to testify, who had you come here?

A. These fellows, Mr. Bache and this fellow. (Pointing to Mr. Drinker.)

Q. Bache come after you in person?

A. No, sir, up there yesterday evening, and he told us.

Q. Who was he, seen him here today?

A. Yes, the man there, Mr. Curtis.

Q. When did you first see Curtis, how long ago?

A. Thursday, last Thursday.

Q. How far you live from Clinton, how many miles?

A. Ten miles or more.

Q. You mean Thursday, yesterday or yesterday a week ago? A. Thursday a week ago.

Q. What town you live in? A. New Tazewell.

1051 Q. He came up there to see you?

A. No, sir, came down here.

Q. Mr. Bache here when you got here? A. No, sir.

Q. When did you first see him?

A. Not until he came out there yesterday.

Q. Were you under contract to work for anybody at Arkansas, at Prairie Creek?

A. Work for the mine, the company.

Q. Were you under contract to work for them?

A. I don't reckon under contract.
Q. You had no agreement? A. No, sir.
Q. Who were you working for?
A. Prairie Creek Coal Company.
Q. Who was superintendent of that company?
A. I forget his name, can't think of it.
Q. Where was the Prairie Creek Coal Company located and what was its business?
A. Cleaning up and getting out coal.
Q. Where was it located? A. Don't know.
Q. If they were engaged in any kind of business at all you don't know it?
A. They were working and getting out coal.
Q. You know that Prairie Creek Coal Company was doing this work?
A. Sure was doing the work, I reckon they was.
1052 Q. I ask you now, Mr. Thomas, if you know whether that is true?
A. It went by that name, Prairie Creek Coal Company.
Q. Where was the Prairie Creek Coal Mining Company doing business? Where were they transacting business?
A. Coal business.
Q. Where? A. Prairie Creek.
Q. Was two companies running that mine at once?
A. I don't know.
Q. Who paid you for your work, what company?
A. Prairie Creek Company.
Q. You took your pay in checks or cash? A. Cash.
Q. You received a statement of your time before they paid you?
A. I don't know, was not there any pay day.
Q. You paid there for your services? A. No, sir.
Q. Where were you paid? A. Not been paid yet.
Q. Still owe you for that four days, do they?
A. Yes, not been back after it.
Q. Never been after you to pay it, either, have they?
A. No, sir.
Q. Did you know the two fellows that come on the mountain to you? A. No, sir.
Q. Did you have any understanding, or were you instructed by anyone in authority what to do—what to do in case any trouble arose?
1053 A. No, sir, I didn't. No, sir.
Q. Did anyone else in your presence or hearing?
A. No, sir.

Q. What did you mean by saying I didn't?
A. Because I didn't hear anything, or anyone say anything to me about it.
Q. Anything said to anybody in your presence about it?
A. No, sir.
Q. Then you say now you didn't know anyone you met on the day of this alleged trouble, the 17th day of July, 1914, except your father and those that were with you, that went from Coal Creek to that state in company with you?
A. That's all I knowed.
Q. You further say you don't know and didn't know then the name of a single man that you met that day on the road or elsewhere except those you have named?
A. No, sir, only them that went from here with us.
Q. You don't know whether you met or saw that day belonged to an organization or not?
A. No, sir, just what they told me.
Q. Did they pay your father for his work down there?
A. First work he done there they did.
Q. Pay for the last? A. No, sir.
Q. Did they pay your brother-in-law, Perry?
A. He said they did, yes.
Q. I asked what you know about it, not what they said.
(No answer.)
1054 Q. Wasn't anything to keep those people from shooting you that day you went down by the tipple on your way to Hartford?
A. No, sir, not a thing in the way to keep them from killing me.
Q. Did you go back to camp that afternoon of the 17th?
A. No, sir.
Q. What was the name of the tip you saw fire, the name of the mine? A. No. 3.
Q. How far is that from the boarding house where you say you were working?
A. About a mile, the best I remember."
I will omit what was read by the other side. (Reading):
"Q. Back to the mountain, when those men came to you up there you say they approached you and asked you what you were doing there? A. Yes, sir.
Q. Where were your guns and all that? A. Yes, sir.
Q. And you told them what you were doing there?
A. Yes, sir.
Q. Then they said they would help you out of there?
A. Yes, take us out.
Q. Show you how to get out? A. Take us out, they said.
Q. That all that was said or done on that occasion?

A. That's all that was said or [dine] there I remember.
Q. That's all they said?
1055 A. Throwed their guns down on us when they first come up.
Q. Throwed their guns on you? A. On the crowd.
Q. Didn't throw them on your daddy alone?
A. On the crowd, I said.
Q. You had forgotten that, had you, when you said you had told all that occurred?
A. Throwed their guns on the crowd.
Q. You had forgotten that particular part of it?
A. Yes, sir.
Q. You know Buster Moore? A. No, sir.
Q. You know Harry Dunlap?
A. Yes, seen him a few times.
Q. Know Terrence Molly? A. No, sir.
Q. You know Johnny Molly?
A. No, sir, didn't know him.
Q. You know Charley Cheek?
A. Seen him there a few times.
Q. You acquainted with a man there which was named, worked around the camp—called Rusty?
A. Not acquainted with him, seen him.
Q. That what they called him?
A. Yes, called a fellow Rusty.
Q. He there after you went there?
A. He was there when I was there, yes.
Q. You know about when he left there?
1056 A. No, sir.
Q. How many days before this trouble? A. No, sir.
Q. You saw him about the place there?
A. I don't know how many days it was.
Q. But there was a man there who responded to that name, Rusty? A. Yes, sir.
Q. What aged man was he?
A. I don't know, looked to be about 35.
Q. 35 years of age? A. Yes, sir.
Q. What complexion? A. I don't know.
Q. What sized fellow? A. Low fellow.
Q. Weigh about 170 or 175 pounds?
A. I guess he would weight about 150, best I remember.
Q. What was he doing around the mine?
A. I don't know what he was doing.
Q. Was he discharged after you got there?
A. I don't remember if he was or not.
Q. Did you know a man named Riley?
A. No, sir, didn't know him.

Q. The men that you refer to as having been run off out the road and the three that was pointed out to him, you say that his family was carried into Hartford?

A. Yes, sir.

1057 Q. I will ask you if it is not a fact that the husband of the mother, and the father of those children, if they were not all carried into the town of Hartford at the same time you were and that the man's name was Riley?

A. This man was not carried there with us.

Q. Who told you, how did you learn that he was the husband of this woman, that he was head of that household?

A. She did.

Q. What became of her and the children?

A. Sent her somewhere, I forget where, back to her old home place.

Q. Over to Oklahoma, wasn't it? A. No, sir.

Q. When did they go away?

A. They started on Saturday evening.

Q. That was the only family with your family and others in that house, the only family that was carried down there and stationed in Hartford? A. Besides our yes, sir.

Q. Where was the Prairie Creek Coal Mining Company doing business? A. At Prairie Creek.

Q. Where was Prairie Creek Coal Company doing business? A. Prairie Creek.

Q. Now do you know whether both of those companies were operating that mine at that time?

A. I don't know if both or not.

1058 Q. Which one you say was operating the mine the Prairie Creek Coal Company? A. Yes, sir.

Q. That's the company?

A. That's the name of that place where we was at, yes.

Q. Who paid you for your work, what company?

A. Prairie Creek Company.

Q. You took your pay in checks or cash? A. Cash."

The Court: Let me make an inquiry, please. How many witnesses have you descriptive of the incidents on the occasion of this mob?

Mr. Lucas: We have a little less than half we had before. I should say we have approximately 30.

The Court: From the very nature of things, there can be little controversy as to these incidents described by these witnesses.

Mr. Lucas: No, that is correct, your Honor.

The Court: There is really no controversy about that, is there, Mr. Warrum?

Mr. Warrum: No, sir. There is some question as to just what precipitated the thing, though.

The Court: Precisely. That may be true, but we have had a number of witnesses detailing something about which there is no controversy.

Mr. McDonough: There is just one thing I would like to suggest, your Honor. The witnesses recall things from a different viewpoint.

1059 The Court: Certainly.

Mr. DcDonough: Some of these not yet introduced testified to important matters which go to make up the conspiracy. They saw the battle.

The Court: Why should we listen here day after day to a description of events about which there is no controversy?

Mr. McDonough: I think we can abbreviate to some extent on that.

The Court: You can read part of the evidence of such witnesses, and offer the remainder for the record, if you desire. The jury is quite well advised—I think the court is—about the state of affairs that existed. Speaking of the battle, as to what brought it about or who brought it about and this state of mob down there and the outrages committed, and all those things, in the very nature of things I don't apprehend there can be much question about the facts.

Mr. Drinker: We will see what can be done toward shortening that up, your Honor.

The Court: I want you to take enough time to thoroughly present the case, but in litigation it is not necessary to go over and over again points that are not controverted.

Mr. McDonough: Just one thought, your Honor. Some of this evidence—

The Court: You can introduce it for the record.

Mr. McDonough: Since they deny a conspiracy, it is important to read some of them.

The Court: Anything that bears on that, of course, it is well to read, but why spend time on conceded matters?

1060 Mr. Drinker: We have not heard them concede anything in this case, your Honor.

The Court: They have conceded one thing right now. They have conceded that this was not in dispute.

Mr. Drinker: That the property was burned down, but how it was burned down is in dispute.

The Court: There is no dispute in regard to a great many of these matters. Anything of that kind that you can eliminate will save a great deal of time.

Proceed.

Mr. Hardin: I will read the testimony of J. W. SYLLSBERRY, found on page 1196 of the record of the former trial (reading):

"Q. What is your full name? A. J. W. Sylsberry.
Q. Where do you live? A. Live at Clarksville.
Q. You have been an employer of men, and over men, and talked to them, and made them understand you, and I want you to talk so that the last juror can hear, and the court behind you can hear, and the defendant's counsel can hear. I want you to talk right up now. Where do you live?
A. I live at Jamestown, about three miles from Clarksville, Clarksville is my postoffice.
Q. How long have you lived there? A. About two years.
Q. Where did you live before that?
A. Lived at Oklahoma, Moffatt, pretty near a year.
Q. What have you been doing for the last two years?
1061 A. Mining coal.
Q. At Jamestown? A. Yes, sir.
Q. When did you go to work for the Bache-Denman Coal Company, in 1914?
A. In 1914, on the 4th of April, I believe.
Q. Who hired you to go down there? A. Mr. Looper.
Q. What had you been doing just previous to that?
A. Running a pigeon hole for myself.
Q. Where?
A. Near Prairie Creek, what they call the narrow, up in the mountains there.
Q. What were you employed as? A. Blacksmith.
Q. Blacksmith? A. Yes, sir.
Q. Now on April 4th two days before the riot of April 6th, do you remember whether any coal was hoisted or not?
A. No, sir, I don't. I don't think there was, though.
Q. What were they doing at the mine?
A. Mostly just cleaning up around the tipple, is about all that was done on the 4th.

Q. Were the pumps running?

A. I am not sure. I don't remember about that. I believe they was, though.

Q. Now, on the 6th of April, state what you saw and heard in regard to that crowd coming.

1062 A. Well, there was quite a crowd went to the school house, and part of them came from the direction of Huntington, and part from the direction of Hartford, and met at the school house, and had a meeting of some kind, I can't tell what it was.

Q. About how many people would you say there was in that crowd?

A. Something like twelve or fourteen hundred.

Q. Did you see a band? A. I think so.

Q. Do you know which direction that came from?

A. Huntington.

Q. Do you know anything about a committee coming to the mine from that meeting? A. Yes, sir.

Q. State what you know about that.

A. Mr. Slankard came into—

Q. (Interrupting) Who was Slankard?

A. And Mr. Goddard.

Q. Who were they? A. Mr. Slankard and Mr. Goddard.

Q. What position did they hold?

A. Mr. Jim Slankard and Mr. Goddard, I believe Shell Goddard.

Q. Who was Jim Slankard?

A. He was constable at Hartford at that time.

Q. Did you know whether he was a member of the Union?

A. No, sir, I do not.

Q. Who was Mr. Goddard?

A. I think he was city marshal, I am not sure.

Q. Did they come to you and talk to you?

1063 A. They came up to the boiler room from out where the crowd was, and asked us if we would pull the fire.

Q. What did they say, and what did you say and do?

A. They asked us, they said the crowd sent them in there as a committee, to see if we would pull the fires, and walk out there with them, and we told them we would, and they went back down to where the crowd was, and Mr. Slankard got up on a platform, built by the side of the scales, and made a speech to the crowd of some kind.

Q. What happened?

A. As soon as he made his little talk, the crowd made a run for the boiler room.

Q. You—how would you describe the crowd coming there?

A. The crowd made a run in a bunch, just like a herd of cattle, for the boiler room.

Q. Did anyone in the crowd say anything to you or Mr. Looper?

A. Not that I remember of. There was one man I recognized that walked up where I was standing, out close to the shaft.

Q. What did he do to you?

A. The first I remember, now I believe he asked if we were going to pull the fire.

Q. You were in the boiler room at that time?

A. No, sir, standing out close to the shaft, between the boiler room and the shaft.

Q. What was his name?

A. I don't know whether I can call it just now or not. Newman, Will Newman.

1064 Q. Do you know where he worked?

A. He worked at Six Central, I think.

Q. He asked you if you were going to pull the fires. What did you do then?

A. While I was talking, the fellow that was firing, he run off around the boiler room, in the direction of the hill, on the south side, with a big crowd after him.

Q. Do you know his name?

A. I know it if I can think of it.

Q. Elmer Searles?

A. Elmer Searles was the man, and the crowd run him off around the dirt pile, and so he didn't come back, and then Mr. Looper volunteered to go in and pull the fire, and keep them from burning the boilers up.

Q. How much danger is there in that?

A. About the time we got the fire pulled,—they crowded in on us, when we were pulling the fires, and said to throw us in the furnace and burn us alive, but they didn't bother any of us or put their hands on us, until we had the fires pulled from the boilers, and the first thing I knew, somebody walked up and hit me in the back of the head with a club and knocked me down.

Q. Have you a scar there now? A. Yes, sir.

Q. What did you do, did you fall?

A. I got up to my knees, and as I got up, I recognized one man standing up on the slack, just a little above me, and about that time somebody struck me again on the head

1065 here, and he also struck at me, and kicked at me, at the same time.

Q. Who was that?

A. I cannot call his name just now, I know it if I can call it. I cannot call his name to mind just now.

Q. I wish you would think, Mr. Sylsberry.

A. He was one of the miners there that had work there at No. 4, before the trouble came up, but I can't call his name to memory just now. Sometimes I can think of it and sometimes I cannot.

Q. By way of refreshing your recollection, I will ask you if you have not told me in my talking over the case with you that that was Clint Burris?

A. Clint Burris was the man, yes, sir.

Q. What happened after that?

A. They was kicking me and beating me, until I was almost dead, and a man by the name of John Silver came to me, and taken me out of the boiler room. I think he taken me out between the two boilers; I am not sure which direction he did go, but he came in while they were beating and tromping me in the slack, and he took me out of the boiler room through the back way, and took me out, up to the house there, that they called the guard house, and kept me a couple of hours, and then brought me to Fort Smith in a car, to the hospital.

Q. While you were up there at that house was Looper brought up?

A. I stopped at a branch, a little ways up, to wash my hands, and they came leading Looper up while I stopped there.

Q. With whom did you come to Fort Smith?

A. With Mr. Finley.

Q. Who else was in the car?

1066 A. Me and Mr. Looper and Mr. Finley, and I don't remember the other man, it seems there was another man, but I don't remember who it was.

Q. Looper came in the same car with you?

A. Yes, sir, Looper and I rode in the back seat of the car together.

Q. What was Mr. Looper's condition?

A. Pretty badly beaten up, his upper teeth, the front teeth were all knocked out.

Q. How long were you in the hospital?

A. About two weeks, I don't remember now.

Q. Who paid the hospital bill?

A. The company, the coal company.

Q. Now, some time after this you were subpoenaed to go to Hartford to testify before the State Labor Commissioner?

A. Yes, sir.

Q. State what occurred in connection with the service of that subpoena.
A. When they subpoenaed me to go to Hartford?
Q. Yes, sir.
A. I shut down and left the mine, and came to Fort Smith.
Q. Now, state who came to the mine, and what was said?
A. Mr. Davis, was the man that came with the subpoena.
Q. Did you know who he was?
A. Yes, sir, John Davis.
Q. Do you know where he worked?
A. I think he farmed, mostly, I don't think he worked around the mine any, if he did, I didn't know it.
1067 Q. Do you know what position he held?
A. I think constable or deputy constable, something like that.
Q. What did you say to him, if anything?
A. I told him I was not going.
Q. You told him you were not going? A. Yes, sir.
Q. Did you tell him why?
A. Because I didn't care about going down there and being beat up again.
Q. Did he say anything to you about protection?
A. Yes, sir, he said they would give us protection, that Mr. Slankard would protect us, and I told him he didn't do it on the 6th of April, and I wouldn't take any chance going with Jim Slankard and being beat up nowhere, and I didn't go.
Q. What did you do at the mine that day, with regard to going to Hartford, or somewhere else?
A. We left the mine that day, about two or three o'clock, along the middle of the afternoon somewhere, and came to Fort Smith that evening, or that night together.
Q. How many of the employes?
A. Everything that was working at the mine, I don't think there was a man left.
Q. Where did you go from the mine, what direction?
A. I came back home north of Midland where my family was.
Q. Did you walk?
A. Yes, sir, I walked back home and got my horse and buggy and drove into Fort Smith that evening, or that night, it was after dark before we got in here.
1068 Q. Just one little question there,—did you remember whether Slankard made his speech from the platform there before or after you were beaten up?
A. Before I was beaten up.
Q. Did you see that flag put up on the tipple, or banner?

A. No, sir, I seen a part of it after we went back to work.
Q. Did you see the banner? A. No, sir.
Q. You don't know what that banner stated?
A. No, sir.
Q. Mr. Sylsberry, are you the father of Earl Sylsberry, who was killed on the 17th of July? A. Yes, sir.
Q. He was working for the Bache-Denman Company on the 17th of July? A. Yes, sir.
Q. How long had your son worked there?
A. I don't know exactly, he had not been there though, but a short time; I reckon something like three or four weeks.
Q. He had been working while the company was still operating union? A. Yes, sir.
Q. He had been a member of the Union?
A. Yes, sir.
Q. How old was he?
A. He was born in October '86.
Q. 28 years old, then, at the time he died.
A. Yes, sir.

1069 O. T. LOOPER, of lawful age, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:
Q. Give your full name to the reporter?
A. O. T. Looper.
Q. Immediately prior to April 14th, what was your occupation? A. Prior to,—
Q. Immediately prior to going with Bache-Denman, what were you doing? A. Operating a small mine.
Q. Where was that mine located?
A. Prior to that time it was located east of the mine No. 4, at Prairie Creek, about three quarters of a mile.
Q. Was it known as the Looper Mine?
A. It went under the name of the Smedley Mine; John Smedley opened the mine.
Q. What sort of a mine was it? A. It was a slope.
Q. During the time that you had it, was it operated open shop or union? A. Yes, sir.
Q. Which was it? A. Open shop.
Q. When you disposed of the mine, did you then become employed by the Bache-Denman Coal Company?
A. Yes, sir.
1070 Q. In what capacity?
A. Assistant superintendent.

Q. Were you at the mine on the day of the riot, April 6th?
A. Yes, sir.
Q. Will you describe the events that took place on that day?
A. Well, it has been so long I don't know hardly whether I can or not.
Q. Just describe briefly,—I might say the jury has heard part of it this morning, now, just describe what you saw that day and what happened to you?
A. I was beat up there that day by some parties; there was a demonstration there. There was a collecting of a crowd that looked like two or three thousand people that come near the mines.
Q. Where did that crowd assemble from?
A. From a school house, north and west of the mine, something like half a mile away, was where they assembled and come in a crowd down to the mine.
Q. Now, before the whole crowd came there, did any men come in to see you?
A. Some time during the morning there were two fellows come, as they claimed they were a committee, sent by the body of men that were at the school house to see, or ask us if we were going to shut the mine down. I don't remember what reply I made them, because I didn't think it concerned them at that time, I didn't think they were official members from the body.
Q. Who were they, do you remember?
1071 A. One's name was Monick, John Monick.
Q. And what was the other man's name?
A. And the other fellow's name was Vester Howard.
Q. Lester or Vester? A. Vester, Howard.
Q. Did that committee ask you or invite you out to meet the crowd?
A. They asked me if I had nerve enough, was about the way they put it, if I had nerve enough to go out and face that crowd.
Q. Did you stay at your work?
A. I stayed at my work.
Q. Now, do you recall any other group of men, coming in where you were?
A. I believe in the afternoon Mr. Cameron, the main superintendent, and Jim Slankard,—Jim Slankard was constable of Hartford Township.
Q. Was he a union man?
A. Yes, sir, and also fire boss, I believe, at one of the central mines at Hartford.

Q. Of the Central Coal & Coke Company? A. Yes, sir.

Q. What was said,—was this a special committee that came in there on the property?

A. I don't remember just what the conversation was when Mr. Cameron came. I believe, if I remember right, he asked me what I thought about pulling the fires and shutting the mine down.

Q. Was this Superintendent Cameron?

A. Yes, sir.

1072 Q. Was this after the committee had talked with him?

A. He and one of the committeemen, if I remember right, came there together to talk with me about that.

Q. And what was decided about pulling the fires?

A. We decided that if they would leave and go home that we would pull the fires and close the mine down.

Q. Now, just describe what you did in that connection?

A. Well, after we agreed to pull the fires and close the mine down, I then told the fireman and the engineer man to go pull the fires and let the water out of the boilers. As the fireman went into the boiler room,—we were out between the tipple and the boiler room, when we met the committee. When the fireman went into the boiler room some fellow threw a missile or a rock or something at him and struck the wall nearby, it didn't hit him at that time, and they went to hollering and throwing and he run off, he didn't stop to pull the fires. He ran away. I don't know where he went to, and then I said to Mr. Sylsberry, I said, "You and I will go in and pull the fires and let the water out as we have agreed to and shut the place down." Mr. Sylsberry practically had the fires pulled, and I saw he was getting very hot, just about to burn up, and I told him I would assist him and did. I went ahead and helped him to pull the fires and turn the water out of the boilers.

Q. What was the crowd doing during this time that you were pulling the fires?

A. They were cursing and hollering.

Q. Was there anyone that was doing a great deal of

1073 talking that you remember?

A. There was one fellow, Mike Sisco, if I remember right, I believe that was his name.

Q. Was he a union miner to your knowledge?

A. Yes, sir, he was a Greek or Italian, or foreign nationality.

Q. Where was his home? A. At Huntington, Arkansas.

Q. Do you remember who it was that was run off from the property, pursued by the crowd that you spoke of?

A. Yes, sir, it was Elmer Searles.

Q. He was one of the employes there at the mine?

A. Yes, sir, he was employed as a fireman.

Q. Will you just go on and describe what happened to you immediately after you got the fires pulled?

A. Well, after we got the fires pulled, some fellow taken me by the arm, I was hot myself when I got through and sweat running into my eyes and some fellow taken me by the arm and said, "Come on out, Looper, that is enough, you have it all out", and when I went through the door some fellow hit me with something and that was the last I knew until the city marshal of Hartford, Sil Goddard came and helped me up, and another fellow by the name of Guynn,—

Q. How is that name spelled? A. Guynn.

Q. Was he a union miner? A. Yes, sir.

Q. And was Sil Goddard a union miner in addition
1074 to being constable of Hartford? A. Yes, sir.

Q. Now, just state what they said?

A. The first word that I heard Sil Goddard say, he said, "Stand back, you have killed this old man already, he is an old man and you have killed him already, get away and stop." He taken me up to the house there where the guards were, about four or five hundred yards, three or four hundred yards from the tipple, and I had not been there very long until Mr. Finley came there with a car and brought me to the hospital at Ft. Smith.

Q. Was there any doctor in that crowd, present in the crowd when you were beaten up?

A. Yes, sir there was a doctor,—Dr. Chambers, I believe.

Q. What did you hear in connection with the presence of a doctor there?

A. I heard someone, I don't remember whether Sil Goddard, or who it was, but someone, after I was picked up, called for Dr. Chambers just remarked that he would not treat no dam scab or do anything for a dam scab, or something like that.

Q. And did he or not do anything for you?

A. He did not.

Q. You had no medical attention at that time?

A. None whatever.

Q. Where did you first receive your medical attention?

A. At the hospital here, Sparks Memorial Hospital.

Q. How long were you in the hospital?

A. I think about ten days, if I remember right; I
1075 don't remember just the dates.

Q. Now, Mr. Loper, were you at any time identified with the United Mine Workers?

A. At one time prior to this.

Q. Were you a member of the United Mine Workers?

A. Yes, sir, I was a member a number of years.

Q. Did you, during the period that you were a member, attend the meetings of the organization? A. I did.

Q. Did you attend the local meetings of the local to which you belonged? A. Yes, sir.

Q. And will you state whether or not, in attending the union meetings, whether you learned from the discussion of the union miners that took place at those meetings, the policy and practice of the Union as to interfering or not interfering with small mines employing eight or ten men, operated open shop? A. Well, it was always my understanding,—

Mr. Warrum: The defendants separately object to this question as immaterial.

The Court: He may answer it.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Go ahead.

A. If I remember right the Constitution of the United Mine Workers gives any man the right to operate a small place, where he did not employ more than eight or ten
1076 men, on the open shop basis; that the United Mine Workers had no jurisdiction over a place that was operated with eight or ten men.

Q. Based on the period that you were a member of the organization, as a matter of practice, did you know them to interfere with small mines such as you have stated that are operating open shops?

Mr. Warrum: Same objection.

The Court: Overruled.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. They did not no more than just to tantalize you; what I call the sweaters come around the mine and delay your work trying to organize the men.

Q. Was it their practice to actually close out a small mine such as you have described?

A. I never knew them to try to force out one entirely; nothing more than aggravate the men and keep them from work.

Q. How many men did you employ when you were operating open shop?

A. Not over twelve, I don't believe, at any one time.

Q. And during the time that you were operating open shop, did the United Mine Workers ever actually close you out? A. They did not.

Mr. Lucas: That is all.

Cross-Examination

By Mr. Warrum:

Q. How long were you a United Mine Worker, as you say?

A. Well, I don't know the number of years. I believe
1077 District 21 was organized in 1887, I believe, or 1888 and I went into the Mine Workers as charter member.

Q. And remained how long?

A. I mined coal continually up until 1907.

Q. And you were a Union Miner during that time?

A. Yes, sir.

Q. And that is the period to which your attention was drawn in the question just asked you by counsel for the plaintiff as to the policy of the United Mine Workers?

A. Yes, sir.

Q. Now, the mine that you operated is a very small mine, what is known as a pigeon hole mine? A. Yes, sir.

Q. That is the popular term to describe them?

A. Yes, sir.

Q. They are mines where some man has opened a small slope, or taken the dirt off the coal at the top, wagon mine, and is operating it with eight or ten men under his immediate direction? A. Yes, sir.

Q. And you worked with your men, is that right?

A. No, sir; I didn't do much work.

Q. Were you present?

A. I was there directing the work.

Q. You had immediate personal, intimate relationship with your men? A. Oh, yes, certainly.

Q. And they did not interfere with you under those
1078 circumstances? A. No, sir.

Q. But where the employer was a mining corporation, and they had three or four hundred men, they were interested in having it organized, is that right? A. How is that?

Q. Where the mine employed a hundred or more men the employer was a non-resident, and not in as intimate personal

relationship with the men as you were with your men, they were interested in having the mine organized, is that right?

A. I don't believe I get you.

(Question read by the reporter.)

A. Yes, sir, I believe it is.

Q. Now, you say they would come around occasionally and try to organize your mine? A. Yes, sir.

Q. Were they just some members of the Union or officers of the Union. A. It was generally the pit committee.

Mr. Warrum: That is all.

The Court: Stand aside.

(Witness excused.)

Mr. Lucas: We will now offer the testimony of J. RILEY BAILEY, taken at the former trial, found on page 1352 of the record.

Mr. Hardin: (Reading)

"Q. Where do you live, Mr. Bailey?

A. Three miles below Clarksville.

1079 Q. What business are you engaged in? A. Mining.

Q. How long have you lived in that community?

A. I was principally raised there.

Q. What kind of business were you in in 1914?

A. Well, I was working at Prairie Creek part of the time.

Q. Before you were working at Prairie Creek where had you worked? A. I worked at Jimtown.

Q. What kind of business? A. Running an engine.

Q. What is your age? A. 32 years.

Q. Have you been engaged in other business in Johnson County other than the coal business? A. Yes, sir.

Q. What kind of business?

A. I worked principally at saw mill work there.

Q. Who employed you to work at Prairie Creek?

A. Employed me to work at Prairie Creek? The fellow that got me to work there, that told me to work, was old man Bud Eustis.

Q. He was the one—

A. (Interrupting.) That sent me to work.

Q. That sent up there after you? A. Yes, sir.

Q. Were you then in Johnson County, Arkansas?

A. Yes, sir.

Q. You had lived there how long?

1080 A. I lived in Johnson County, I might say I was raised there; I have been living there off and on all my life.

Q. Then did you come to Fort Smith on your way to Prairie Creek? A. Yes, sir.

Q. Did you go to the office of the Bache-Denman Company? A. Yes, sir.

Q. Where did they send you then?

A. They sent me to Midland, told me to go down to No. 4.

Q. What kind of work were you employed to do at No. 4?

A. Guarding.

Q. Do you know a Mr. Barnes that was there?

A. Yes, sir.

Q. State whether or not you were under him.

A. Yes, sir, I was under Mr. Barnes.

Q. Were you furnished a gun as a guard? A. Yes, sir.

Q. State what instructions, if any, were given you by Mr. Barnes as to what use you would make of the gun.

A. He gave me the gun, and said, "don't you use this gun in no way except self-defense," or something like that. To never use the gun except in self-defense or some other way, inside.

Q. What were—were you guarding in the day time or night time? A. Night time.

Q. What time did you get to Midland, I mean what day?

A. Well, I believe it was Friday, the 3rd I landed at No. 4.

Q. The 3rd of what month? A. Of April.

1081 Q. Of April? Did you go to work there on that day, or the following day, on Saturday?

A. No, I went to work Friday about 2:00 o'clock.

Q. Were you there during Sunday, April 5th?

A. Yes, sir.

Q. Did you have any difficulty with anybody on Sunday April 5th? A. No, not to amount to anything.

Q. If anything took place, tell what it was.

A. Well, we did have a little trouble down there, but I found out afterwards it was Clint Burris. He came by there, I was guarding on the south side of the tipple, and he started down the wire, I guess maybe fifteen or twenty feet below where we had the rope stretched, and I asked him not to come through there, to go on down, and he made a remark about me being a scab, but went on down.

Q. What did he say?

A. He said, "I ain't going,—" I have forgot the words he did use, but anyhow, he called me a scab, and went on

down, and I never understood what he did say as he got on down right smart.

Q. Was that all the trouble that you had?

A. Yes, sir, that is all that I remember of.

Q. Did you ever use any violent or profane or insulting language towards him? A. No, sir.

Q. Did you abuse anybody during that day?

A. No, sir.

Q. State whether or not you were arrested on that
1082 day? A. No, sir, I was not arrested on that day.

Q. Were you there on the morning of the 6th?

A. Yes, sir.

Q. What were you doing on that morning?

A. I was guarding.

Q. Where were you guarding?

A. On the south side of the tipple.

Q. Were you there when a crowd came there?

A. Yes, sir.

Q. Where did that crowd come from?

A. Well, it came from the school house, a little northwest of the tipple. It came down the road from the school house, and came on the north side of the tipple.

Q. Were you arrested before the crowd came?

A. Yes, sir.

Q. Who arrested you?

A. The constable, Slankard, I believe was his name.

Q. What charge did he make against you?

A. Breach of the peace.

Q. When? A. On the Sunday before.

Q. Did he tell you when you were supposed to have committed the offense?

A. No, he never said when—well, I found out afterwards when I was told I had committed the offense.

Q. I didn't understand you.

[Q]. He never said just when it was, but we found
1083 out at the trial that that was the day I was supposed to have committed the offense, on the Sunday before.

Q. On Sunday before? A. Yes, sir.

Q. Was anybody else arrested with you? A. Yes, sir.

Q. Who? A. Mr. Barnes.

Q. What charges did they have against him?

A. The same charge.

Q. Had you any knowledge of any offense having been committed by either you or Barnes? A. No, sir.

Q. Was any bond required of you? A. Yes, sir.

Q. What was the bond?

A. I have forgot right now, I believe $250.00, maybe $300.00, I have forgotten.

Q. What was the bond for, your appearance where?

A. Hartford, I think.

Q. Do you remember what justice of the peace?

A. No, sir, I don't remember.

Q. Before some justice was it? A. Yes, sir.

Q. Were there any others with Slankard at the time that he arrested you? A. Yes, sir.

1084 Q. Did you go to Hartford? A. No, sir.

Q. When were you due at Hartford, under your bond?

A. I have forgot now just when we was due there.

Q. Why did you not go there?

A. I don't know now, why we didn't go, something turned up that we didn't go down.

Q. What time in the morning was that arrest of you, on Monday morning April 6th?

A. That was about, I would judge between 8:00 and 9:00, well between 9:00 and 10:00 somewhere along there, I have forgotten now just when.

Q. Was it before the crowd had arrived? A. Yes, sir.

Q. Were you armed at the time? A. Yes, sir.

Q. What did they do with your gun if anything?

A. They never done anything with our guns.

Q. How did you make bond, Mr. Bailey?

A. I think the company put up a bond, maybe a cash bond; I disremember.

Q. State whether or not Slankard started to take you and Barnes away from there.

A. He started, and when we got up to the office, and, let me see now, some one there, I don't know just now who it was, but anyhow, they intended to take us down there in a buggy to Hartford, but they finally made the bond, a cash bond for us and we stayed.

1085 Q. They had a buggy there to take you and Barnes over to Hartford that morning?

A. Yes, sir, they had a buggy, the bookkeeper or somebody was going over in a buggy with us that morning.

Q. What did you do after you gave the bond?

A. I went back to my post on the south side of the tipple.

Q. What was the first knowledge that you had of the coming of the crowd there?

A. Well, that morning, about—somewhere about 8:00 or 9:00 maybe 10:00, we heard the band begin to [pay] over there around the school house, and we didn't know for sure whether they were going to come or not, but Mr. Barnes at noon time. I believe it was about noon, he had a couple of

letters he wanted to mail, and he said, "I am going up to the guard house" that is about a quarter, I imagine, from the tipple, and he said, "I am going up there and if they come while I am gone, you stay on your side of the post, and if they come on my side you stay right where you are", and sure enough they came up on his side, the side that he was guarding, on the other side of the tipple, and then he came back and said, "Let's go up there" and I said, "We had better not go" and he said, "Oh, yes, let's go up there", and we went, and he began to instruct me right away, and said, "Whatever you do don't raise that gun in an attempt to hurt anybody at all; don't do that, just use common sense, and ask them not to cross the rope, or break over it", and we did so. We had not been there over five or ten minutes until a rock came from a wagon, or somewhere, and hit Mr.
1086 Barnes on the hat and knocked his hat off, and about that time there was some little crippled fellow that had an arm all burnt up, I reckon by gas in the mine, he stepped over the rope, and Mr. Barnes asked him to step back, and he said, "If you want me back you can shoot me back" and Mr. Barnes said, "No, we ain't going to hurt nobody, or shoot nobody". Mr. Slankard, and two other fellows stepped over the rope, and said they were appointed a committee to talk to the superintendent.

Q. Keep your voice up so that they can hear you.

A. (Continuing.) They said they were appointed a committee to see the Superintendent about the trouble, and while they were gone in the office, they made the raid on us, and taken our guns away from us.

Q. They done what?

A. They made the break over the rope and took our guns away, and beat us up.

Q. Who took your guns away from you?

A. I don't know the fellow, the fellow's name.

Q. But it was taken away from you? A. Yes, sir.

Q. And what was done then?

A. They beat us up, knocked us down two or three times, and then I made my escape to the office, and Mr. Barnes went to the guard house.

Q. To what extent were you hurt?

A. I was hurt pretty badly, knocked me down, and cut three or four gashes in my head, and when I was down
1087 they kicked me in the back, and I still feel the effects of that today.

Q. Did you make any assault on anybody there?

A. No, sir.

Q. Did Mr. Barnes?

A. No, sir, not that I saw.

Q. Did you know how many people were there on the outside of that rope when they came up?

A. No, sir, I don't know.

Q. Can you give an estimate of the crowd that assembled down at the school house?

A. I would judge three or four hundred men, there might have been more than that, I cannot tell.

Q. You went to the house, did you say?

A. I went to the office.

Q. You went to the office? A. Yes, sir.

Q. What become of you then?

A. I stayed in the office there a couple of hours, I don't remember how long, and, then I went from there to the guard house, and there I seen Mr. Barnes.

Q. Then what became of you?

A. He had done 'phoned for a car to come in from Fort Smith after us, and we came on in.

Q. Did you come in to the hospital? A. Yes, sir.

Q. How long did you remain in the hospital?

A. Five days I believe I was at the hospital.

1088 Q. Did you go down to the mine any more?

A. Yes, sir.

Q. What kind of work did you do when you went back?

A. I guarded.

Q. When did you go back?

A. The best I remember, I went back on the 12th—I don't remember when I did go back, I just don't remember when I did go back. I went back though in a week or such a matter, two weeks I would say, when I went back there maybe.

Q. Were you arrested at any other time after that?

A. Yes, sir.

Q. When was that?

A. Let me see. I forget now. I believe it was the 18th or 19th, or 20th, somewhere along there, of June, I believe.

Q. What were you charged with then?

A. No, it was not, it was in May. Well, I was charged with disturbing the peace then.

Q. What was the nature of the charge; disturbing the peace how, if you know?

A. They claim I got off on the 16th day of May, at Prairie Creek, and they said I talked ugly to a little girl.

Q. Did you do that? A. No, sir.

Q. Were you in that crowd at all? A. No, sir.

Q. Had nothing to do with that? A. No, sir.

1089 Q. Were you tried on the first charge, the one that they had arrested you for on the morning of the 6th of April?

A. No, sir, I was not tried. They sent an attorney down there.

Q. Over to Hartford? A. Yes, sir.

Q. You didn't go there? A. I didn't go there.

Q. Of your own knowledge do you know what finally became of that case? A. No, sir, I don't.

Q. What became of the other charge, the one charging you with insulting the girl?

A. To the best of my knowledge they whipped that around, and fined me a hundred dollars and costs at Midland, and then they brought it to Greenwood.

Q. It was appealed?

A. Yes, sir, and it was appealed from Greenwood to Fort Smith.

Q. A change of venue taken from Greenwood to Fort Smith? A. Yes, sir.

Q. And what was done with it here?

A. Throwed out, to the best of my knowledge.

Q. Dismissed? A. Yes, sir.

Q. Going back for a moment to the trouble, I will ask you whether or not you saw anybody hit Barnes with anything? A. Yes, sir.

Q. What with?

1090 A. I would judge it was with the same gun that they started to hit him, I throwed up and knocked the lick off of Barnes the best I could, but it was the same gun they had taken off of Mr. Barnes.

Q. Was it a rifle or pistol? A. Rifle.

Q. On what part of the body did they hit him with the gun?

A. Just glanced his cheek that time, and I knocked it off.

Q. In that difficulty did you hear Barnes use any rough violent or insulting language of any kind? A. No, sir.

Q. When you came back through the yard, did you observe the condition of any of the property there what had been done to it, if anything? A. Yes, sir, I came back—

Q. (Interrupting) Describe what you saw.

A. I came back down through what we call the bunk house, down there, and they had throwed mattresses and springs and things, and covers, and throwed them all on the floor, and that is about all I reckon.

Q. Do you know who did that of your own knowledge?

A. No, sir.

Q. You found it there as you came back through?
A. Yes, sir.
Q. Was that the property of the company that you and the other employee and persons guarding it had there for your use? A. Yes, sir.
Q. And that was thrown where?
1091 A. Just around over the floor, scattered around.
Q. Any of it destroyed?
A. I can't say destroyed, it was just thrown around there?
Q. Mr. Bailey, how long did you stay at the mine when you went back there?
A. Well, I went back once, I have forgotten now how long, and I left there on the 29th or 30th of May. I don't know how long I did stay that time, somebody came in there, and was going to subpoena us to meet a committee or board member, or somebody at Hartford, or road overseer,—anyhow they came up there and was going to subpoena a lot of us, and they did subpoena several of the boys, and several of us dodged around to try to keep this man [fro] subpoenaing us; we thought they wanted to get us over there and beat us up, and John Shaleen or someone, telephoned to Fort Smith, and they said to come on in, and 28 of us, I believe, walked around Sugar Creek Mountain, and got on the train and came to Fort Smith.
Q. State whether or not you were coming in to Fort Smith as witnesses in the injunction suit, or whether you were just called in?
A. I can't say, I believe that was it.
Q. Shaleen was an employee of the company?
A. Yes, sir.
Q. And it was at his request that you came here?
A. Yes, sir.
Q. Do you remember the last time that you worked there?
A. Yes, sir.
1092 Q. When was that?
A. I went back I believe on the 2nd or 3rd day of May, and I worked up until—no I worked 12 days, to the best of my knowledge, the last time I was down there, and got shot.
Q. Explain about that, how you got shot.
A. I was working by the month, and Mr. Shaleen was kind of a boss and time keeper down there, and he didn't know how I was hired, and Mr. Bohannan was hired too by the month, as a guard, and Mr. Bohannan I believe was a day guard at the present time, and I was on nights when I went back the last time they put me on nights, and he came over there and waked me up, there was a little mistake in our

time, Mr. Shaleen had not understood it though, and I had my arm on his shoulder some way that way (indicating), looking over in his face, and he must have been,—there was a step that came down from the office like, and I don't remember whether he had one foot up on the step or how, but someway he dropped his gun, and it went off, and went through his arm and got me right there (indicating).

Q. Was it an accidental shot? A. Yes, sir.

Q. Was there any difficulty between you there at that time?

A. No, sir.

Q. None between any of you? A. No, sir.

Q. The shot was an accidental one? A. Yes, sir.

Q. You didn't work any after that?

1093 A. No, sir.

Q. What date was that? A. The 23rd day of May.

Q. During the time that you were there up to that time, Mr. Bailey, state whether or not you had anything to do with the shooting up of Frogtown?

A. No, sir, I did not.

Q. Did anyone else of the employees or guards there to your knowledge do anything towards shooting up Frogtown?

A. No, sir, not to my knowledge.

Q. Did you mention a man, a Mr. Bohannan awhile ago in your testimony?

A. Yes, sir, he was the fellow that got shot, Bill Bohannan.

Q. William Bohannan, that was the man you mentioned?

A. Yes, sir.

Cross-Examination

Mr. Grant: (Reading)

"Q. You are Riley Bailey from Johnson County?

A. Yes, sir.

Q. How long did you work for the Pennsylvania Mining Company non-union mine before you went over to Prairie Creek to work in this mine for the Bache-Denman people?

A. I worked [womewhere] about three years.

* * * * * *

Q. You went then to Prairie Creek about what time was it in July?

A. On the 3rd day I think,—it was on Friday, in April.

Q. The 3rd day of April?

1094 A. Yes, sir.

Q. 1914? A. Yes, sir.

Q. And when you got there,—who did you go with from Fort Smith down there? A. Arch Caldwell.
Q. Arch Caldwell? A. Yes, sir.
Q. Who was he? A. A fellow from Johnson County.
Q. He came here to go down with you?
A. Yes, sir.
Q. Did you meet anybody in Fort Smith that gave you directions what to do? A. Yes, sir.
Q. Who did you meet here? A. Mr. Finley.
Q. And he told you to inquire for Barnes when you got to the Prairie Creek property?
A. He told me that Mr. Bache was down there, and if he was not to inquire,—
Q. If he was not there to do what?
A. To inquire for Mr. Barnes.
Q. Was Bache there when you got there? A. Yes, sir.
Q. And you met him? A. Yes, sir.
1095 Q. Was he the man that gave you your orders and how to work, and what to do about the mines?
A. No, sir.
Q. Who did that? A. Mr. Barnes.
Q. What did Bache tell you?
A. He told me to see Barnes.
Q. When you got there, where did you see Barnes, what was he doing?
A. He was a guard, I found him on the south side of the tipple.
Q. Standing there with a gun? A. Yes, sir.
Q. He was pointed out to you, and you went out to where he was? A. Yes, sir.
Q. And you asked him what to do?
A. I had a recommendation from the Pennsylvania Mining Company, and I gave that to him.
Q. Recommendation as a guard from the Pennsylvania Mining Company? A. No, sir, as an engineer.
Q. What did he tell you to do there, to go in as an engineer or guard. A. No, sir, he told me to guard.
Q. He gave you a gun, did he? A. Yes, sir.
Q. What kind of a gun was it?
A. A 30-30-high powered.
[—]
1096 A. Yes, sir.
Q. How many cartridges did he give you to go with it?
A. I don't think none, except what was in the gun.
Q. The gun was loaded?
A. I suppose there were shells in the magazine.

Q. He didn't give you an empty gun to guard with?
A. No, sir.
Q. He gave you a gun with a magazine full of cartridges?
A. Yes, sir.
Q. The gun was loaded? A. Yes, sir.
Q. Where did you guard?
A. On the south side of the tipple.
Q. Was that toward the school house, or on the other side?
A. No, the school house is a little northwest, and this was on the south.
Q. The public road runs right along where you were put to guard? A. No, sir.
Q. How far is that from the road?
A. The main public road runs north of the mine, but there was a little pathway west of the mine.
Q. There was a road there that people traveled generally along there, where you was guarding?
A. No, sir, I was guarding, you might say, between the two roads?
Q. You walked from one road to another, that was your beat? A. Yes, sir.
Q. You worked on the night of the third?
1097 A. Yes, sir.
Q. You say you guarded there until the 6th of April when the trouble occurred? A. Yes, sir.
Q. Who was guarding with you out there?
A. At the time the crowd came up to the ropes?
[A.] Barnes.
Q. Mr. Barnes? A. Yes, sir.
Q. Now do you know the name of the man that came up there and was talking with Mr. Barnes at the time the trouble started, the man that you have described?
A. No, I don't know his name.
Q. How many was with that man that talked to Barnes?
A. There was a bunch of them all together, and way back in behind the rope.
Q. The ones that came up talking to him, how many was in the party that came up talking to Barnes?
A. There was four or five hundred, as thick as they could be back from the rope.
Q. The whole four or five hundred, as I understand they were all talking to Barnes?
A. No, sir, they were back in, of course. There was a pretty good bunch in around there.

Q. You know the man that spoke to Barnes and did the talking for the crowd? A. No, sir.

1098 Q. Did Barnes strike that man with the butt end of his gun, whoever he was? A. No, sir.

Q. And, did he push him back over the wire?

A. No, sir, he told him to get back.

Q. He didn't push him with his gun, or strike him with it? A. No, sir.

Q. Do you know who it was that hit Barnes?

A. No, sir.

Q. How many times did they strike him?

A. I don't know how many times they struck him.

Q. Did they take the gun away from Barnes before they hit him? A. Yes, sir.

Q. Take your gun away from you before they struck Barnes? A. Yes, sir.

Q. You don't know who did that?

A. Yes, sir.

Q. Was Slankard there you say?

A. No, sir, he was in the office at this time.

Q. He was in the office, and was not out there when the trouble occurred? A. No, sir.

Q. He came out afterwards, did he?

A. Yes, sir, afterwards.

Q. Now, you say Mr. Barnes instructed you not to raise the gun that morning?

A. Yes, sir, he instructed me all the time to use my

1099 gun in no way at all except in self defense, or something like that.

Q. But you say on the morning of the 6th, he told you not to raise your gun, what time in the morning did he give you that instrnction?

A. That was the same day, that was just before we went up there.

Q. Was Mr. Barnes and you expecting some trouble over there when he told you not to raise your gun?

A. Yes, sir, we allowed there might be.

Q. You allowed there might be some trouble there?

A. Yes, sir.

Q. There was considerable excitement around there that day, that morning? A. Yes, sir, quite a bit.

Q. And you had heard of it before?

A. No, we had not heard of it, except that band playing, and that big crowd gathering over there, and of course we might be expecting a little trouble, he was. I was not thinking much about it.

Q. Barnes was expecting trouble? A. Yes, sir.

Q. And told you not to raise your gun or do anything out of the way? A. No, sir.

Q. Do you know who it was that told Barnes he would have to shoot him back if he got him back? A. No, sir.

Q. Did you see Sylvester Howard there that day
1100 about the time the trouble occurred?

A. No, sir, I don't know him.

Q. How many times were you arrested? A. Twice.

Q. What was the date of your first arrest, if you can give us that? A. On the 6th of April.

Q. Now, you were charged with what at that time?

A. Breach of the peace.

Q. Breach of the peace? A. Yes, sir.

Q. Then the other time you were arrested was what day?

A. That was about the 18th of May.

Q. That was when you were charged with insulting the young lady, was it, some girl?

A. No, I mean the 18th day of April, I reckon that was, instead of May.

Q. The 18th of April you were arrested charged with insulting some girl? A. Yes, sir.

Q. Do you know the name of the girl you were charge with having insulted?

A. I heard the name at the trial.

Q. Was it Miss Johnson?

A. It seems like it might be Miss Johnson.

Q. You did insult one up there on the road near the school house, did you, on that public road?

1101 A. No, sir.

Q. Did you not insult a great many other women, ladies and girls on that public road near that school house?

A. No, sir.

Q. You were tried you say before a justice of the peace at Hartford? A. Supposed to be, I didn't go down.

Q. You didn't go to either of the trials?

A. Yes, sir, I went to the second one.

Q. It was at Hartford? A. No, sir, at Midland.

Q. Before Judge Quinlan? A. I don't know his name.

Q. And then the case was sent to Greenwood?

A. Yes, sir.

Q. And you took a change of venue up here?

A. Yes, sir.

Q. Who was your lawyer?

A. The company lawyer, I have forgotten his name.

Q. The company furnished a lawyer? A. Yes, sir.

Q. [Hoa] many guns were kept inside of that stockade for use of the mine guards?

A. I cannot tell you, I don't know exactly how many.
Q. How many did you see, a very large number of them?
A. Not when I was there, I don't guess over ten or twelve in all.
Q. In all that you saw. A. Yes, sir, in all that I saw.
1102 Q. Did they have a great deal of ammunition there?
A. No much.
Q. Not much while you were there? A. No, sir.
Q. Were you guarding there on the night that Frogtown was shot up? A. No, it I was I didn't know it.
Q. Were you guarding there at the time of the battle on the 17th of July? A. No, sir.
Q. How long had you been away from there when that happened?
A. I left on the 23rd of May, and didn't go back any more except one time to the trial.
Q. You never worked there after the 23rd of May?
A. No, sir, I didn't work there no more.
Q. Were the guards doing any shooting during the time that you were working there? A. No, sir."

Mr. Hardin: I will read the portion omitted on pages 1360 and 1361.

(Reading):

"Q. And who was it you say who employed you, and engaged your services to go down to the Prairie Creek property? A. Bud Eustis.
Q. He was also an employee of the Pennsylvania Mining Company at that time? A. No, sir, not at that time.
1103 Q. He had been there, connected with it?
A. No, sir, I don't think at that time he was.
Q. Did he go from Prairie Creek back down there and become connected with that company's property?
A. No, sir, he just worked there.
Q. He just worked there like you did?
A. Yes, sir.
Q. That is what I was getting at."

Mr. Lucas: Now, if the court please, we would like to recall Mr. Ritchie.

JAKE RITCHIE, recalled as a witness on behalf of plaintiffs, having been previously sworn, testified as follows:

Redirect Examination

By Mr. Lucas:
Q. Mr. Ritchie, I overlooked this morning asking you about another part of your experience. Did I ask you if

you had at any time been a member of the United Mine Workers? At any rate, were you at any time a [memb r] of the United Mine Workers?

A. Yes, sir, I have been.

Q. When did you first join the organization?

A. I went in as a charter member when they first started.

Q. And at what point, Mr. Ritchie?

A. Huntington.

Q. Since joining as a charter member, what has been your connection with the United Mine Workers?

A. Well I was a member, and did such work as they required you to.

Q. Have you been a member off and on since that
1104 time, dependent upon the particular job that you were holding at the mine, wherever the job required a Union Miner, you were a member of the organization? A. Yes, sir.

Q. Now, during the times that you were a member of the United Mine Workers did you attend the meetings of the local union? A. Yes, sir, some.

Q. Were you pretty regular in your attendance?

A. Well, tollerably.

Q. State whether or not in attending the union meetings you heard the union miners present at such meetings discussing the open shop?

A. Well, yes, sir, some. They talked it somewhat.

Q. Will you state the substance of what those discussions were?

Mr. Warrum: The defendants separately object to the question because it calls for a conclusion on the part of the witness, the substance of a discussion long years ago.

The Court: Yes, if he can state what was said it would be better.

Q. Can you state what was said at those meetings, Mr. Ritchie?

A. I don't know that I could just exactly, more than that it was about open shop. They didn't want open shops to work, and wanted people to join the Union.

Q. They wanted the open shops to join the union?

A. Yes, sir, they didn't want them to work.

Q. Did they say why they wanted them to join the union?

A. Well, to keep all such coal as that off the market
1105 so this union coal could go on the market would be the biggest object.

Q. That is, to keep the open shop coal off of the market?

A. Yes, sir.

Q. Do you recall at these local meetings, any of these local meetings that you attended, any parties present other than the immediate members of the local?

A. Well there would be none, unless it would be a Board member or something like that, they would not be allowed.

Q. Do you remember some of the Board members or other officers being present at some of the meetings you attended?

A. Yes, sir.

Mr. Warrum: The defendants separately object to this unless the witness' attention is drawn to some particular meeting.

The Court. Yes, we cannot tell anything about this. See if he can tell where it was?

Q. (By Mr. Lucas) What local did you attend, where was the local, at what town?

A. Attended different places. I have attended at Huntington and at Prairie Creek.

Q. Now, do you recall the visit of any of the Board members or other officers at either Huntington or Prairie Creek locals?

A. Well, over at Prairie Creek, I remember Pete Stewart being there one time.

Q. You remember Pete Stewart? A. Yes, sir.

Q. Was he a Board member or officer?

A. He was a Board member.

1106 Q. At the particular meeting that you recall his attending, did you hear the discussion about the open shop that you have described? A. Yes, sir, some.

Q. Did you hear Pete Stewart engage in any of these discussions? A. Yes, sir.

Q. Was anything said as to the effect of the open shop coal on union coal, if they did not come into the union?

Mr. Warrum: Now, the defendants object to this line of questions because it is leading and suggestive, and intended to be constructed as to instruct the witness on the answer expected.

The Court: It is very leading.

Mr. Lucas: I will withdraw the question.

Q. Mr. Ritchie, at these local meetings were the officers of the local or any other officers that were in attendance as a matter of practice in the habit of informing the rank and file members of that local as to open shops that were trying to get started in that territory?

Mr. Warrum: The defendants renew their objection.

Mr. Lucas: This is a matter of practice,—

The Court: I understand, but the witness ought to do a little testifying. He may answer.

To which action and ruling of the court the defendants at the time duly excepted and still except.

A. Yes, sir.

Cross-Examination

By Mr. Warrum:

1107 Q. Did you have a conversation with the gentleman that has just been asking you questions during the noon hour? A. How is that?

Q. Have you been talking this matter over with Mr. Lucas during the noon hour? A. Yes, sir, some.

Q. Did he tell you about the discussion among the miners as to the effect of open shops on the market?

A. No, sir.

Q. He didn't tell you that? A. No, sir.

Q. Don't you know that the miners were interested in the wages and that that was all they were interested in?

A. Yes, sir, they would be interested in the wages.

Q. That was all they were interested in, was it not, the wages and working conditions?

A. Give me that again.

Q. That is all they were interested in, the wage scale and working conditions in the joint contract they had with the operators employing them? A. Yes, sir.

Mr. Warrum: That is all.

The Court: Stand down.

Mr. Drinker: May I examine this witness just a moment.

The Court: Yes, sir.

Redirect Examination

By Mr. Drinker:

1108 Q. Did Mr. Lucas tell you to tell anything that was not the truth or anything that you did not know before he spoke to you? A. No, sir.

Mr. Drinker: That is all.

(Witness excused)

Mr. Drinker: We will now offer the deposition of CHARLES L. REIERSON, found on page 1594 of the former record.

(Reading)

"Q. What is your full name, Mr. Rierson?
A. Charles L. Rierson.
Q. Where do you live? A. Bronxville, New York.
Q. What is your present occupation and position?
A. I am Vice President of the Remington-Arms-Union-Metallic Cartridge Company.
Q. What position did you hold in the Remington Arms-Union Metallic Cartridge Company in the month of June, 1914? A. General sales manager.
Q. Did you have at that time a factory sales manager by the name of Hill. A. Yes, Harry B. Hill.
Q. What was his territory?
A. A portion of Oklahoma and Western Arkansas, the counties bordering on Oklahoma and that approximate territory.
Q. Have you had the records of your companies searched, at my request, and in compliance with a subpoena served upon you, covering shipments made by your Company
1109 in June, 1914, shipped to the State of Arkansas and charged to the account of the Atkinson, Williams Hardware Company of Fort Smith? A. I have.
Q. As General Sales Manager of the Remington Arms Company in 1914, what were your duties relative to the receipt of orders for such shipments and the shipment of goods?
A. I had charge of the Sales Department, which included the sales of all goods in the United States and Canada, and all orders and correspondence pertaining to orders came under my supervision.
Q. I will ask you if the records, orders and correspondence which you have produced here today in response to my subpoena were at that time and have since been under your control and custody?
A. They have been stored since the end of the calendar year 1914 at our Bridgeport Works, at our warehouse there. We always transfer a year's correspondence, orders and so forth to Bridgeport, to make room in our general office for current files and correspondence which [came] during the following year.
Q. During the whole period since their receipt and since their notation and up to the present time, these records have been under your control? A. Oh, yes.

Q. I will ask you if you have an independent recollection at these transactions which I have called to your mind?

A. Yes, I remember the transactions.

Q. (Paper shown witness). I show you a carbon copy of a letter addressed to H. B. Hill, care of Hayden Sporting Goods Company, of McAlester, and signed in Type-
1110 writing "Remington Arms-Union Metallic Cartridge Company", June 10, 1914, and ask to have it marked for identification Reierson Exhibit No. 1 of this date.

(Said paper was marked "For Identification Reierson Exhibit No. 1, September 18, 1917".)

Q. I ask you to state what that paper is?

A. That is an acknowledgment of a telegram received from our representative, Mr. Hill, stating that we had expressed the rifles ordered in his telegram, as directed.

Q. Was that a telegram?

A. Yes, a night letter, it so states on the copy.

Q. I show you another copy telegram dated June 10, addressed to Mr. H. B. Hill, McAlester, Oklahoma, and signed in typewriting "Remington Arms-Union Metallic Cartridge Company", and ask to have it marked for identification Reierson Exhibit 2, of this date.

(Said paper was marked "For Identification Reierson Exhibit No. 2, September 18, 1917".

Q. I ask you to state what that is.

A. That is a copy of a telegram sent to our representative, Mr. Hill, advising that we will ship ten rifles, presumably in response to a telegram received from him instructing us to do so. It is not so mentioned there, but I assume that is what it is because it is our usual mode of procedure in replying to a telegram.

Q. Does this carbon copy of telegram marked Reierson Exhibit No. 2 refer to the same shipment as the night letter which was just introduced?

1111 A. I am unable to say; I have not had sufficient time to look up the original telegrams from Mr. Hill, and therefore I could not tell whether there are two orders or one; these telegrams bear the same date and it is possible they refer to the same order.

Q. Have you asked that a search be made for these incoming telegrams? A. Yes.

Q. Have you as yet been unsuccessful in locating them?

A. Yes, as yet I have.

Q. If your employes or agents are successful in locating a telegram from Mr. Hill to your company of June 10th, or-

dering ten auto-loading rifles, will you send it to me at Fort Smith, with a letter explaining what it is? A. Yes.

Q. I show you an order on a thin paper order blank headed "Order for Remington-UMC goods dated June 10, 1914, with the first line caption "Jobber Atkinson, Williams Hdw. Co." the first caption "Jobber Atkinson Williams Hdw. Co." with the address caption "Ft. Smith, Ark."; the third caption "Ship to Jno. Mastell"; "Shipping point Hartford, Ark."; at the bottom, the notation in writing "This order telegraphed to Company," and in a space with the caption, Signature of purchaser, the words in writing "Federation of Labor" and in parantheses "Holt". In the space of the caption "Signature of Salesman", "H. B. Hill". And I will ask to have that marked Reierson Exhibit No. 3 for identification of this date.

"Said paper was marked "Reierson Exhibit No. 3 for
1112 Identification, September 18, 1917."

Q. I will ask you what that is, Mr. Reierson?

A. That is an order taken by Mr. Hill, our representative, which was to have been invoiced or billed by us to Atkinson-Williams Hardware Company, Fort Smith and shipped by express direct from our factory to John Mastell, Hartford, Arkansas; and it is evidently the order of one of them received by the previous copies of telegrams inasmuch as he states that the order was telegraphed to the Company."

"Q. Referring to the notation at the bottom "Signature of purchaser," will you explain what that notation is?

A. We require our salesmen, when taking orders from retail dealers to be shipped through jobbers, to secure the signature of such dealers wherever possible.

Q. Do you know how this signature of the purchaser, "Federation of Labor—Holt" was secured?

A. I do not.

Q. Do you know how it happens to be on that order?

A. The signature you mean?" * * * * * *

"Q. Yes?

A. I assume that the order was placed by the signer of the order with Mr. Hill and in conformity with his instructions to obtain the signature.

Q. And that was the course of business pursued in your office at that time? A. Yes, and still is.

Q. What record would there be in your office as to
1113 who the purchaser of that shipment was?

A. None besides this order and Mr. Hill's letter, which we have yet been unable to locate, and the invoice to the Atkinson-Williams Hardware Company; in shipping the

goods I think it undoubtedly would be stated that they were shipped direct to this party at the address given on the order and stated in the telegram. Whenever a direct shipment is made it is so stated on the invoice.

Q. Referring again to the signature of the purchaser in the ordinary course of business, would not the name of the purchaser be wired, together with the order, by your salesman, Mr. Hill?

A. In a case of this kind it would necessarily be because it was desired to be shipped direct to that particular party. The order, you will notice, specifies that it is to be shipped to John Mastell, Hartford, Arkansas. The telegram undoubtedly so stated. This order is merely a confirmation of the telegram.

Q. Well, I do not think you quite get my question. I am referring, not to the name of John Mastell, to whom it was shipped directly, but to the signature of the purchaser, which appears there as the "Federation of Labor—Holt." Will you tell me where that came in your records?

A. That would not have been mentioned in the telegram; there was no reason why it should be.

Q. Then will you state why it was put in this order?

A. I presume they were the purchasers; that was the way of giving the order, no doubt, and, in accordance with our requirements, Mr. Hill, asked them to put that on the
1114 order as a mark of authenticity." * * * * *

"Q. And that is Mr. Hill's handwriting?

A. Yes, that is Mr. Hill's handwriting.

Q. And you required your salesmen to secure the signature of the purchaser? A. Yes, whenever possible.

Q. And, if it was not possible, would that name be given and filled in by the agent?

A. Yes—in a case of this kind not necessarily. All that would be put in would be the name of the jobber to whom goods are to be shipped and invoiced, and the name of the purchaser of the goods, and if the purchaser declines to sign the order, his name would not appear at the bottom because that space is provided only for the signature of the purchaser. Occasionally we find some dealer who is squeamish about signing orders, probably having had a bad experience from signing papers in the past; and we do not always insist upon it, and particularly in this case." * * *

"Q. These orders are made by the agent at the time of the sale and mailed to your office? A. Yes.

Q. They confirm the telegraphic order? A. They do.

Q. Have you had the records of your office searched so that you can state that this shipment referred to on the order,

which is Exhibit 3, was the only shipment made by your Company as of June 10th to John Mastell, at Hartford?

A. No; I have been unable to locate the way-bills cov-
1115 ering that shipment, and a search is still being made for them; I do not know whether there was one shipment or two.

Q. (Paper shown to witness.) I show you a copy of a letter dated June 10th, 1914, to H. B. Hill at McAlester, and signed by the Remington Arms-Union Metallic Cartridge Company, and ask that it be marked Reierson Exhibit 4 for identification of this date.

(Said paper was marked "For Identification Reierson Exhibit 4, September 18, 1917."

Q. I will ask you to state what this is (Exhibit 4)?

A. That is a copy of a letter written by one of the clerks of our Sales Department—" • • • • • •

"Q. You needn't tell what it says.

A. Ten autoloading rifles.

Q. Was that written under your direction? A. Yes.

Q. Did that refer to this shipment covered by the order blank Exhibit 3? A. Undoubtedly.

Q. I show you another order dated June 10, 1914, billed to Atkinson-Williams Hardware Company, a shipment to John Mastell, Hartford, Arkansas, covering 8 Remington UMC No. S-A autoloading rifles 25/33, 30/32 and 35 cal.; two thousand Rem. UMC Ctgs. for above M. C." and upon it at the bottom appears the notation in writing "This order telephoned to jobber," and the signature of the purchaser is given "Federation of Labor—Holt" and the signature of the salesman is given as H. B. Hill; and I will ask
1116 you if that is produced from your original files and if that covers a shipment made by your Company to John Mastell at Hartford?" • • • • • •

"A. No. That was produced from our office, but it was shipped direct, evidently, by Atkinson-Williams Hardware Company from their own stock at Fort Smith, inasmuch as it states that the order was telephoned to the jobber, the Atkinson-Williams Company being the jobber and Mr. Williams telephoned that order. Every order is confirmed in that manner, whether we ship it or whether the jobber ships it.

Mr. Hull: I ask that that be marked for identification Reierson Exhibit 5 of this date.

(Said paper was marked "For Identification Reierson Exhibit 5, September 18, 1917."

Q. That order, Exhibit 5, referred to a different shipment from the one we have discussed under Exhibit No. 3?

A. Undoubtedly.

Q. (Paper shown witness) I show you a letter on the letterhead of the Remington Arms-Union Metallic Cartridge Company, dated at McAlester, Oklahoma, June 14th, 1914, addressed to the Remington U. M. C. Company, and signed by H. B. Hill, and I ask to have that marked for identification Reierson Exhibit No. 6, of this date.

(Said paper was marked "For Identification Reierson Exhibit 6, September 18, 1917."

Mr. Hull: I want to offer in evidence exhibits marked for Identification 1, 2, 3, 4 and 5, and about which the wit-
1117 ness has testified." * * * * * *

"Q. I show you Exhibit No. 6 for identification and ask you what that is, without stating its contents, what is that paper?

A. That is a letter from our representative, Mr. Hill.

Q. What is this pencil notation at the top with the name "Reierson"?

A. That indicates that it was received in some other office of our company. My name is merely put on there so that it would reach me.

Q. Did that letter reach you? A. Yes.

Q. Do you remember it? A. Yes.

Q. Is that notation at the bottom of that letter in your handwriting? A. It is.

Q. Which reads, "Mr. Adams, Kindly treat this in strict confidence." Signed "C. L. Reierson"? A. Yes.

Q. I show you a carbon copy of a letter dated June 19, 1914, addressed to H. B. Hill, at McAlester, signed by the Remington Arms-Union Metallic Cartridge Company, and ask that it be marked "Reierson Exhibit 7 for Identification." (Said letter was marked "Reierson Exhibit 7 for Identification, September 18, 1917.") I ask you if this letter, received by you from your agent, Hill and marked Exhibit
6, refers to and relates to the shipment of 10 autoload-
1118 ing rifles covered by the order which is marked Exhibit No. 3?

A. I assume that it does and possibly other orders sold during the same week.

Q. Other orders sold to whom?

A. To the Atkinson-Williams Hardware Company.

Q. And shipped to whom?

A. To John Mastell, Hartford, Arkansas.

Q. I will ask you what this Exhibit 7 is?
A. It is an acknowledgment of Mr. Hill's letter of June 14th.
Q. And a reply to it? A. Yes.
Q. Was that dictated by you?
A. Presumably yes; it was signed by me, at any rate; I sign a good many letters that I do not dictate.

1119 Mr. Drinker: I will read the letters. First I will read Exhibit No. 6;

"Red.—U. M. C. Co..
299 Broadway,
New York, N. Y.

Gentlemen:

You will notice on my expense account for this week that I have entered entertainment expense while at headquarters on Wed. and Saturday but this expense was absolutely necessary inasmuch as I was compelled to entertain the superintendent of the Federation of Labor of this district. The Auto. Rifles sold this week were for the Federation of Labor and this transaction must be kept absolutely secret as in case these operators in this coal field were to find that I had sold rifles to the miners they would cut me off their list when it came time to stock their stores.

It is only a question of time until this section will be under martial law and would suggest that you acknowledge receipt of no orders in this territory for at least sixty days. Will see that both sides are supplied with Rem. U. M. C. products but do not want to be caught in the deal.

Yours very truly,
H. B. HILL."

And the signature over to the left appears in Mr. Reierson's handwriting as testified by him the following:

"(Mr. Adams—Kindly treat this in strict confidence.
C. L. REIERSON.)"

Mr. Drinker: I will read Exhibit 7 to the jury:

June 19, 1914.

1120 Mr. H. B. Hull,
Hayden Sporting Goods Co.,
McAlester, Ark.

Dear Sir:

We acknowledge your letter of June 14th in regard to Auto-loading rifles sold for the use of the American Federa-

tion of Labor. We were just about to write you in reference to this matter when we received your night letter yesterday morning ordering ten rifles Model #14 and a quantity of ammunition for same. Realizing the great danger of your being too active in matters of this kind, we at once sent you a day letter instructing you to discontinue such activity, and later in the day received your telegram advising that these matters had been handled through the salesmen representing the jobbers. This reassures us and makes us feel better.

Your letter of the 14th indicates that you apparently realize the risk of antagonizing the operators in the local field. It would be a serious matter if this should come about. We appreciate your anxiety for business and are just as anxious to have business as we ever were, at the same time we do not think it wise to run serious risks to get it.

There is another side to the matter. We cannot afford to antagonize the Federation of Labor. Such antagonism might extend to the point of having these people black list our goods. This might very easily extend to other labor organizations and would be a very serious affair for us. Morover, we are large employers of labor ourselves and are very careful in matters of this kind not to give organized labor
1121 an opportunity to criticise us.

It is a different matter for a jobber's salesman to be active in a case of this kind as the jobber has not so much at stake. Morover, it is difficult at times to connect a jobber with matters of this kind where as there is no escape for us. The jobber handles all lines of goods while we have only our one line to depend upon.

We hope you will continue to use the greatest discretion in this matter and that you will not permit yourself or us to be known in connection with the transactions that have already taken place.

We have your telegram this morning ordering some 45/70 cartridges and same will be given prompt attention.

Yours very truly,

REMINGTON ARMS UNION
METALLIC CARTRIDGE CO.
C. E. Reierson.
General Sales Manager."

CLR/FEW

"Q. To expedite things a little I will show you two order blanks, both dated June 17, 1914, and both billed to the Atkinson-Williams Hardware Company, the one which is to be shipped to Oscar Layton I will ask to have marked Reierson Exhibit 8 of this date. (Said paper was marked 'For Identification Reierson Exhibit 8, September 18, 1917.') And the one which is to be shipped to John Mastell I will ask to have marked Reierson Exhibit 9 for identification. (Said paper was marked 'For Identification Reierson Exhibit 9; September 18, 1917.') Referring first, to Exhibit 8, I will ask you what that is?

1122 A. That is a copy of an order sold on [Jule] 17, 1914 by Mr. Hill for account of the Atkinson-Williams Hardware Company, to be shipped to Oscar Layton, Hartford, Arkansas, the shipment to go from the jobber's stock.

Q. Are you quite sure that that was shipped from Fort Smith?

A. The order would indicate that to be the case. The only change in it that I could see would be the case of the Atkinson-Williams Hardware Company not having the goods in stock, in which event they might have instructed us by telegraph or mail to ship them direct for their account.

Q. Referring to Exhibit 9, will you state what that is?

A. That is a copy of an order taken June 17, 1914, by Mr. Hill for account of the Atkinson-Williams Hardware Company, to be shipped by express to John Mastell, Hartford, Arkansas, presumably from their stock. We always assume that an order goes from the jobber's stock unless it is specifically instructed otherwise.

Q. If the express records show that any or all of these shipments covered by Exhibits 8 and actually were sent either from your Bridgeport factory or from New York City, how would you account for that, in view of your statements that you have just made that they were shipped from the jobber's stock?

A. I may state first that neither of those orders entirely would be shipped from Bridgeport, because those arms are manufactured at Ilion, New York, and would be shipped, if shipped by us, Ilion, or from our warehouse in New York. Bridgeport, Connecticut, at that time was only a cartridge manufactory. That would account for such shipment, if made by us, from either Ilion or New York City, by

1123 the fact that the jobber had not the goods in stock, which frequently happens, and he instructed us, either [my] mail or by wire, of the shipment for this account.

Q. (Paper shown witness) I show you a telegram dated McAlester, June 18, 1914, addressed to the Remington Arms-

Union Metallic Cartridge Company, New York City, and signed 'H. B. Hill' and I ask that it be marked for identification Reierson Exhibit 10 of this date. (Said paper was marked 'Reierson Exhibit For Identification 10, September 18, 1918.') Will you tell us what that is?

A. That is a telegram from our representative, Mr. Hill.

Q. Did that refer to this same shipment?

A. I assume that that telegram was sent in response to a letter written to Mr. Hill in connection with the shipments we have been discussing.

A. I show you a copy of a day letter, dated June 18, 1914, to Mr. H. B. Hill, signed 'Remington Arms-Union Metallic Cartridge Co., C. L. Reierson, General Sales Manager' and I ask that that be marked Reierson Exhibit 11 for identification. (Said paper was marked 'For Identification Reierson Exhibit 11, September 18, 1917.') I will ask you what that is?

A. That is a copy of a telegram sent by our office to Mr. Hill, our salesman.

Q. Was that dictated by you? A. Yes.

Q. Would you say, then, reading that Exhibit No. 10, that Exhibit No. 10 is a reply to your telegram, which is identified as Exhibit No. 11?

1124 A. No; I rather think the copy of the telegram marked Exhibit 11 would refer more particularly to the receipt by telegram of an order for model fourteen rifles and ammunition for them.

Q. That is as to Exhibit 11? A. Yes.

Q. Your telegram? A. Yes.

Q. My question was, Mr. Reierson, whether you would say that Exhibit 10, Mr. Hill's wire to you was a reply to Exhibit 11, your wire to him?

A. Very likely. This was a day letter and would have possibly reached Mr. Hill in time for him to have answered it on the same day by this telegram marked Exhibit 10.

Q. You have an independent recollection of these transactions, have you not, Mr. Reierson?

A. Yes, but it is more or less vague as to small details, inasmuch as three years have passed."

Mr. Drinker: I will read Exhibit No. 10:

"McAlester, Okla. June 18-14 210P

To Remington Arms Union Metallic Cartridge Co.,
299 Bway, NYC

Have used proper precaution all previous matters through Jobbers salesman.

H. B. HILL."

I will read Exhibit No. 11:

"New York, June 18, 1914.

Mr. H. B. Hill,

1125 Hayden Sporting Goods Co.,
McAlester, Okla.

Telegraphic order model fourteen rifles and ammunition received. You are in great danger of compromising us with other faction which would be serious matter. Therefore must instruct you to discontinue personal activities in matter. Of course we will fill without question orders received from jobbers but think best to let jobbers' salesmen handle matter as do not feel it wish for you as our representative to be known in connection with it. Therefore must instruct you govern yourself accordingly. Writing fully.

REMINGTON ARMS-UNION
METALLIC CARTRIDGE CO.
C. L. REIERSON,
General Sales Manager.

Day Letter,

CLR/FEW"

"Q. The goods covered by these documents and these shipments covered by these orders, referred to in these letters and telegrams, as I understand it, were all paid for by Atkinson-Williams Hardware Company? A. Yes.

Q. You received no pay from the purchasers? A. No.

Q. You billed them to the Atkinson-Williams Hardware Company in the usual course of your business? A. Yes.

Mr. Hull: I think that is all."

I will now read Exhibits 1, 2, 3, 4, 5, 8 and 9:

1126 Exhibit 1.

"June 10, 1914.

H. B. Hill,

c/o Hayden Sporting Goods Co.
McAlester, Okla.

Telegram received. Expressing today auto rifles to John Mastell Hartford Arkansas.

REMINGTON ARMS-UNION
METALLIC CARTRIDGE CO.

Night Letter

GEP-P"

Exhibit 2.

"New York, N. Y., June 10, 1914.

Mr. H. B. Hill,

c/o Hayden Sporting Goods Co.,
McAlester, Okla.

Will ship at once ten Autoloading rifles twenty-five calibre.

REMINGTON ARMS-UNION
METALLIC CARTRIDGE CO.

AFH/FEW"

Exhibit 3.

"Jobber Atkinson William Hdw. Co.,

Address Ft. Smith, Ark.
Ship to Jno. Mastill.
Shipping point Hartford Ark.

How) ship)	Quantity	Items	when) Price
		Express from factory ship)	At once.
1127	10	Rem. UMC No. 8 A Auto Rifles 25-25 Cal. This order telegraphed to Company.	

Please ship the above goods as specified do not substitute. If goods are not in stock pleace order from the Remington-U. M. C. Co., 299 Broadway, N. Y.

This order is subject to acceptance of Jobber named.

Signature of Purchaser) Federal of Labor. (Holt).

Signature of Salesman) H. B. Hill

"

Exhibit 4.

"Mr. H. B. Hill,

c/o Hayden Sporting Goods Co.,
McAlester, Okla.

Dear Sir:

We received your telegram of even date requesting us to ship by express to John Mastell, Hartford, Ark., ten #8A

Auto loading Rifles, 25 calibre, charging same to the a/c of Atkinson-Williams Hdw. Co., Ft. Smith, Ark., and in compliance with your wishes, we wired you today as follows:

'Telegram received. Expressing today auto. rifles to John Mastell, Hartford, Ark.'

Thanking you for this order, and trusting that the rifles will reach your customer promptly, we are

Yours truly,
REMINGTON ARMS-UNION
METALLIC CARTRIDGE CO.
GEP-P Per "

1128 Exhibit 5.

"Jobber Atkinson William Hdw. Co

Address Ft. Smith, Ark.
Ship to Jno. Mastell
Shipping point Hartford Ark.

How) when)
ship) Express ship) At once.
Quantity Items. Price.

8 Rem. U. M. C. No. 8A Auto Rifles
25-35-30-32 and 35 Cal.

2 M Rem. U. M. C. Ct. go for above. M. C.

This order telephoned to jobber.

Please ship the above goods as specified. Do Not Substitute. If goods are not in stock please order from the Remington U. M. C. Co. 299 Broadway, N. Y.

This order is subject to acceptance of Jobber named.

Signature of)
Purchaser) Federation of Labor. Holt.
Signature of)
Salesman) H. B. Hill."

Exhibit 8.

Date June 17th, 1914.

Jobber Atkinson Williams Hdw. Co.

Address Ft. Smith, Ark.
Ship to Oscar Layton
Shipping Point Hartford, Ark.

How) ship)	Express	when) ship)	At once.
Quantity		Items.	Price.
1129 20	Rem. U. M. C. No. 14A Rep. Rifles 25 Cal.		
3 M	" " " " "	Ctgs. 25 Rem. Auto M.C.	
1 M	" " " " " "	30 " " "	
1/2 M	" " " " " "	35 " " "	
1/5 M	" " " " " "	32 " " "	

This order given to H. E. Morgan.

Please ship the above goods as specified. Do Not Substitute. If goods are not in stock please order from the Remington-U. M. C. Co. 299 Broadway, N. Y.

This order is subject to acceptance of Jobber named.

Signature of Purchaser) Oscar Layton
Signature of Salesman) H. B. Hill."

Exhibit 9.

"Dated June 17th, 1914.

Jobber Atkinson Williams Hdw. Co.

Address Ft. Smith, Ark.
Ship to John Mastell.
Shipping point Hartford Ark.

How) ship)	Express	When) ship)	At once.
Quantity		Items	Price.
4	Rem. U.M.C. No. 8A Auto Rifles 30 cal.		
4/5 M	" "	Ctgs. 30 Rem.—M.C.	
1 M	" " "	45-70 Springfield M.C.	

This order given to H. E. Morgan.

Please ship the above goods as specified. Do Not Sub-
1130 stitute. If goods are not in stock please order from the Remington-U. M. C. Co. 299 Broadway, N. Y.

This order is subject to acceptance of Jobber named.

Signature of Purchaser) J. Mastell.
Signature of Salesman) H. B. Hill."

Mr. Drinker: You may cross examine.

Mr. Warrum: No cross examination.

The Court: Very well.

Mr. Drinker: I would like to glance through it, if your Honor please, and see if there is anything we wish to offer.

The Court: Very well.

Mr. Drinker: Beginning on page 1619, I would like to offer some of the cross examination:

"Q. I see on the bottom of Exhibits 5 and 3 the words 'Federation of Labor.' Do you know what the Federation of Labor was? A. I do not."

Mr. Warrum: That is not a part of the cross examination. They can read it as part of their direct examination.

Mr. Drinker: I beg your pardon. I saw "Mr. Warrum, reading", and I thought it was cross examination. I will read the whole business if it is direct. Yes, I think it is cross examination.

Mr. Warrum: The cross examination begins on the next page.

The Court: You are reading it, anyhow.

Mr. Drinker: I beg your pardon. You are entirely right. On the top of page 1617:

"Q. Where is Mr. Hill now?
1131 A. The last account I had of Mr. Hill, he was in Oklahoma City.
Q. How long did he remain with you after June 15, 1914?
A. I can not answer that definitely, Senator"—

That must be cross examination, for he refers to him as "Senator". Mr. Hull was not a senator.

The Court: Maybe they made him a senator for this case.

Mr. Drinker: No, that is cross examination, as I have stated. If you will look at the bottom of page 1612, it will be explained. I will read parts of the testimony, beginning on page 1619:

"Q. I see on the bottom of Exhibits 5 and 3 the words 'Federation of Labor.' Do you know what the Federation of Labor was? A. I do not.

Q. I also notice the word 'Holt', which appears to be H-o-l-t. Do you know who that is? A. I do not.

Q. Along about the time that these orders were being filled, and before, your company had been shipping a great many arms to Arkansas that were not to the Atkinson-Williams Hardware Company, isn't that so? A. Yes.

Q. Did you deal with the Speer Hardware Company of Fort Smith, Arkansas? A. No.

Q. Your jobber was the Atkinson-Williams Hardware Company at Fort Smith? A. Yes, sir.

Q. What territory did their rights as jobbers cover?

A. That was limited only by their ability to secure
1132 business, Senator; they had the wide world so far as we were concerned.

Q. Why was it, then, that you required your salesman to place all the orders that the jobbers should receive?

A. I recall that all over the United States we did not sell to the retail trade direct at all; our business is altogether wih the jobbers.

Q. Strictly?

A. Strictly, yes. That applies to every section of the country.

Q. You know not why Mr. Hill wrote in this order here 'Federation of Labor', do you? A. No.

Q. You do not know why he wrote the word 'Holt' there, do you? A. No.

Q. Who is H. E. Morgan?

A. My opinion is that he is a salesman representing Atkinson-Williams Company in that territory.

Q. Exhibit No. 8 shows that the order was turned in to H. E. Morgan to be filled; you don't know who H. E. Morgan is?

A. I am almost positive that he is a representative of Atkinson-Williams, and, if I may explain, I will tell you why I feel that way.

Q. Yes.

A. It is our instructions to all our salesmen that when an order is placed with them by a retail dealer, that the order shall be turned over, if possible, without loss of time, to the salesman representing that particular jobber in that section, because it wins the great favor of that particular salesman, for our goods to have this order handed to him as a
1133 compliment; and that was following our usual procedure.

Q. You have no jobber in that particular section of the country, outside of the Atkinson-Williams Hardware Company, have you? A. Yes.

Q. Who?

A. We have a jobber at Muskogee, Oklahoma.

Q. You mean in the territory of western Arkansas?

A. No, nearer than Little Rock.

Q. Who is your jobber at Little Rock?

A. We have several, Fones Bros. Hardware Company, J. L. Lloyd Company and one other whose name I do not recall.

Q. Then, H. E. Morgan was not a jobber—you are certain of that? A. Oh, yes; we have no jobber of that name.

Q. I believe you stated, Mr. Reierson, in your direct examination, that all goods shipped to the Atkinson-Williams Hardware Company were paid for by them, but you received no checks in payment from any outsider or retail dealer?

A. I do not know that such is the case, but I cannot imagine that to be, because we billed the goods to the Atkinson-Williams Hardware Company, in any of those transactions, and therefore we would look only to them for our pay.

Q. Who is your salesman in the territory of Arkansas and Oklahoma, at present, if you know?

A. Mr. Clyde B. Wells.

Q. Where is he located? A. At Little Rock.

1134 Q. You say that these records produced here by you and introduced by counsel have been in Bridgeport, Connecticut, since 1914?

A. 1915,—I think they would be sent up there at the end of the year.

Q. And you sent them there at the end of the year 1914 or at the beginning of 1915?

A. Yes, as soon thereafter as they can conveniently be gotten together and removed.

Q. Did you have anything to do with taking these orders and handing them over there? A. No.

Q. Did you have anything to do with them after they were transferred to that place? A. No.

Q. Did you have anything to do with gathering them up and sending them to New York for this special attention?

A. I directed that to be done.

Q. You directed then, but you were not present?

A. I don't know anything about it.

Q. All you know about the records here is that they were shipped to you by express from Bridgeport? A. Yes.

Q. Mr. Reierson, have you had occasion to examine your records before this time in reference to this matter?

A. Yes.

Q. Was that in the year 1914?

A. I am unable to state definitely, Senator.

1135 Q. Did Mr. Hull come to you on that occasion and investigate to see if the goods had been shipped to certain parties by your company? A. I don't think so.

Q. Did you get acquainted with Mr. Hull during the summer or fall of 1914, when he was associated with the United States Attorney General's office, and particularly directing his investigation of the trouble in Arkansas between the miners and the operators?

A. I don't remember who it was that I dealt with in that investigation.

Q. By way of refreshing your memory, is it not a fact that he, in company with a secret service agent of the Government, came to your place of business to investigate the matter, and got some matters we have here?

A. A secret service agent did; whether Mr. Hull accompanied him, I do not remember.

Q. Do you keep the books of your company?

A. I do not.

Q. Do you answer all correspondence received by your company? A. I do not.

Q. Out of all the exhibits here produced by you and offered in evidence by counsel for the plaintiffs, you find only one letter that you dictated, I believe?

A. Yes, I think so.

Q. Outside of that you had nothing to do with the preparation of any telegram or the receipt of any of the orders which are marked as exhibits to your testimony, did you?

1136 A. I think there is a telegram sent by me also, Senator.

Q. A telegram?

A. That bears my initials, indicating that I dictated it.

Q. Bearing the date of June 18, 1914? A. Yes.

Q. You have no distinct or independent recollection of having dictated that telegram, have you?

A. Yes, I remember that I dictated that telegram.

Q. That assumes to be addressed to your Sales Agent, Mr. H. B. Hill? A. Yes.

Redirect Examination

By Mr. Hull:

Q. What is the name of your jobber in Muskogee?

A. We have one called the Muskogee Wholesale Grocery Company and the Hooker-Hendricks Hardware Company.

Q. Were they your jobbers in 1914?

A. Yes, both of them.

Q. Is it not a fact, Mr. Reierson, that on your direct examination I asked you whether or not in your opinion this Exhibit 10, the wire from Mr. Hill to your company of June 18th, was not an answer to your day letter to him of the same date? A. Yes.

Q. And you stated that your day letter of June 18th might have gotten there in time for this to have been an answer?

A. Yes.

Q. I show you Exhibits 4 and 1, which purport to be carbons of communications from your office to Mr. Hill,
1137 with the initials 'GEP' as the dictator and 'P' as the stenographer, and I will ask you whose they are?

A. 'GEP' is George E. Pinkney.

Q. Where is he at present?

A. In our office, 233 Broadway.

Q. Who is he? A. A clerk in the order department.

Q. Do you know who the stenographer was who signed herself 'P'? A. I think she is Miss Pool.

Q. Is she still with you? A. Yes.

Q. I show you Exhibit 7, being carbon copy of a letter of June 19th, dictated by you, with the stenographer's initials 'F. E. W.'; will you state who 'F. E. W.' is?

A. Miss F. E. Wildrick.

Q. Is she still with you?

A. Yes—at the present time she is in a hospital.

Q. I ask you if you know who, in 1915, in your office, put these papers in a bundle and sent them to Bridgeport?

A. No, I do not.

Q. Could that fact be ascertained from your books?

A. I think so.

Q. Could it also be ascertained who shipped them to Bridgeport and who received them? A. Yes.

Q. And who got them out down there last week, upon your request? A. Yes.

1138 Q. So far as you know, Mr. Reierson, I have never seen you before yesterday morning? A. No.

Q. So far as you know, I have never been inside of the Remington's office before that?

A. Not to my knowledge.

Q. So far as you know, I have never seen these exhibits that have been offered here today until this morning when you showed them to me? A. No.

Q. Do you know whether they were ever in the possession of a secret service representative?

A. I think some of them were shown to a representative of the secret service, but which they were I could not say.

Q. Do you know whether he took them away with him?

A. I do not remember.

Q. You do not remember that they were ever taken out of your office, do you?

A. No, I do not. I merely remember in a general way that a secret service official came to us for certain information on this matter and that we showed him what we had in our office."

Mr. Drinker: On page 2382, from plaintiffs' Exhibit 181, which is the financial secretary's ledger of Local 2769, of Hartford, we offer so much of page 5 as shows that Oscar Layton was admitted to the local by card; that Oscar Layton's card was received September 22nd, 1914, and that the card was up October, 1914.

And so much of Exhibit 175, page 336, as shows Oscar
1139 Layton was admitted to Local 1565 on May 2nd, 1916, and paid dues during May, 1916, and was dismissed by card May 29th, 1916.

ST. CLOUD COOPER, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Your name is Dr. St. Cloud Cooper? A. Yes, sir.

Q. You are a practicing physician in Ft. Smith?

A. I am.

Q. Were you practicing in Ft. Smith during 1914?

A. I was.

Q. At that time were you connected with Sparks Memorial Hospital? A. I was.

Q. Did you attend certain employes of the Bache-Denman Coal Company at that hospital on April 6th and a few weeks subsequent thereto? A. Yes, sir.

Q. State, if you remember, who the men were that were brought in there and whom you attended?

A. There was a man named Barnes, and Sylsberry, and Bailey, and Looper, and two or three others whose names I don't remember.

Q. To refresh your memory, do you remember Bohannon?

A. Yes, sir.

Q. Will you state the extent of the injuries of the men you have named?

Mr. Warrum: If the court please, the defendants sep-
1140 arately object to this testimony. The extent of the injuries of these parties is not a matter in issue here, and it tends to throw no light on this controversy.

The Court: I can not see how it does.

Mr. Drinker: We want to show these men were really badly hurt.

The Court: Ask him that and let him answer.

Mr. Drinker: We would like to have him describe their condition. They say that was a picnic and all that nonsense in their defense, and we want to put our case in here so that the jury will get the real facts.

The Court: That might be very proper on rebuttal.

Mr. Drinker: We want to prove our case down to the ground, so the jury can get the whole thing, and so the jury can know whether this was a picnic or what it was. We want to prove how much these men were hurt, how badly they were hurt. It was a serious matter, and we want to prove it.

The Court: Suppose it was, it would be nothing for which you can recover.

Mr. Drinker: No, sir, but it makes some difference whether they were little scratches or whether they were hurt, as to whether that was a picnic or a malicious riot.

The Court: It might be very proper rebuttal, but I can not see that it will throw any light on the issues now. People generally do not have shooting irons and go on to shooting at a picnic.

Mr. Drinker: There were no shooting irons there at that time. They didn't do any shooting then. That was in
1141 the other battle. These men were pounded and beaten with their fists,—I suppose they were. I don't know. I wasn't there.

The Court: Well, you have witnesses who have described all those things.

Mr. Drinker: He is an entirely disinterested witness, here at Ft. Smith.

The Court: I have no question about that.

Mr. Drinker: It will not take a minute.

The Court: Proceed. Ask him a general question.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Q. (By Mr. Lucas) Were the men who were brought in there and attended by you seriously injured?
A. Yes, sir. All of them were badly beaten up; that is, they had bruises and contusions and lacerated wounds on different parts of the body.
Q Did any of them have cuts on the head or other parts of the body? A. Yes, sir.
Q. Did any of them have any teeth missing?
A. Yes, sir.
Q. Do you remember who it was?
A. Looper had three teeth knocked out.

Q. (By the Court) In other words, I understand these men were all badly beaten and bruised up, all of them?
A. Yes, sir.

Q. (By Mr. Lucas) How long did you attend them?
A. They stayed in the hospital a week or two weeks.

1142 Mr. Lucas: That is all.

Mr. Warrum: No cross examination.

The Court: Stand down.

(Witness Excused.)

Mr. Drinker: We offer in evidence the deposition of M. W. WESTON:

1143 Mr. Drinker Interrogating:

Q. What is your name, please? A. M. W. Weston.

Rule Called For and Witnesses Are Thereupon Excluded From the Room.

Q. Mr. Weston, where do you live? A. I live at Oilton.
Q. Oklahoma? A. Yes, sir.
Q. Your name is M. W. Weston? A. Yes, sir.
Q. And you testified in the other case?
A. Yes, sir.
Q. The other trial of the Coronado case?
A. Yes, sir.
Q. Mr. Hull took your deposition at that time?
A. Yes, sir.
Q. I handed you this morning a copy of your testimony at that former trial, and you have read it over?
A. Yes, sir.
Q. Where did you live in July, 1914?
A. Well, sir, I could not tell you—I don't remember the days and dates.
Q. Where did you live at the time they had the big battle down at Prairie Creek?
A. I was living in some tents down on the creek about
1144 a quarter east of the mines.
Q. Did you have any interest in a mine near there?
A. Prairie Creek mine.
Q. That was the Bache-Denman mine?
A. (Answer blank)
Q. And what mine was it you were interested in?
A. It was a mine operated once by a man named Looper and I bought it out and I had a one-third interest in it.
Q. Where was that mine from Prairie Creek Number 4, Bache-Denman Number 4?
A. It was directly east and just a little bit south, a quarter of a mile.
Q. Did you get that mine operating?
A. Yes, sir, eventually.
Q. Did you get it started before the big battle?
A. No, sir.
Q. Were you down there before they had the demonstration at Union Hall or School House there at Prairie Creek?
A. Yes, sir.
Q. Where did you load your coal from that mine?
A. Well, the one I was operating right straight west about a quarter of a mile up on a loading rack they had. I didn't have no side track of my own. They were going to build me one and I loaded on the team track.

Q. Where was that team track as between the Number 4 and the—where was the team track located that you
1145 loaded on as between the Goo Goo Eyes fan house and the scale house, was your loading rack?

A. I don't know what you call Goo-Goo Eyes.

Q. Prairie Creek No. 3—where was your team track that you loaded from as between that fan house and the scale house?

A. Right north of the Number 4 Prairie Creek mine and the same track that they loaded on.

Q. I say between Number 4 and the scale house?

A. Number 4 is the mine that burnt down. It was right straight north a piece, right east of the scale house about a quarter, I should judge or hardly so far. It was just on the east side of the Midland Valley railroad and on the south side of the public road.

Q. So the team track was right in the Bache-Denman property?

A. Yes, sir, it was inside of it. It was right on the south side of the road and there was a fence along there and it was on the south side of the road.

Q. Did you work Union or open shop?

A. I worked union men.

Q. And did you start your operations as soon as you originally intended to start? A. No, sir.

Q. What prevented you?

A. They had a little whipping there a few days before—I can not remember exactly—something like about two weeks before, of the men for trying to operate a scab mine as is commonly known.

1146 Q. Who was it that operated this mine?

A. Denman Bache, and they cautioned me not to attempt to work nothing but Union men or I might fare the same way.

Q. Who was it that discussed this with you if you remember? A. A man by the name of Schofield.

Q. You know his first name? A. Frank.

Q. Did you know if he had any relation to the Miners' Union? A. Yes, sir.

Q. What position?

A. I don't know; he held some office in it. I could not say what.

Q. Where did he live?

A. Well, he lived north, south of this school house on the right hand side of the road just before you got up to the little town of Prairie Creek.

Q. Had he worked in the Bache-Denman mine?

A. I could not say, but I think so. I got acquainted with him when I went down there to buy the mine. A fellow passed who I had not seen for twenty-five years and we were passing by and he knew me when he seen me sitting there on the porch and of course when I got down there and started up he visited me quite frequently and he would talk to me about working Union men.

Q. Did he say anything to you about anything that was going to happen at the Bache-Denman mine?

1147 A. Yes, sir.

Q. What did he say?

A. He told me I had better not go to work for a while that it would be unsafe to try to load down there where we had to load our coal, because he said they were going to clean up on these scabs and they would not let them work them mines, and I asked When, and he said he didn't know just when, and promised me that he would let me know in plenty of time that we could get out of the road. We were almost in direct line with that mine just further on east, and I told him it would be kind of a bad place to be in if they started a little war.

Q. And did he let you know? A. No, sir.

Q. Did you see him soon after?

A. Yes, sir, I believe it was I jumped on to him for not letting us know.

Q. Where were you when the big battle came off?

A. When it started I was in Fort Smith.

Q. And how soon did you get back out there?

A. I took the train and went out there to that little town Midland. My team was to meet me there and they had them cut off with this war so that they could not get there.

Q. Who had them cut off?

A. That fighting between the scabs and the Unions.

Q. Your team didn't meet you? A. No, sir.

1148 Q. How did you get home?

A. I hired a livery team.

Q. When you were going on home did you meet anybody? A. Yes, sir, we met several.

Q. Did you meet men on horseback? A. Yes, sir.

Q. Did you know who any of them were?

A. I knew a lot of people there by sight, but didn't know anybody's name.

Q. Did you meet a single man on horseback?

A. Yes, sir.

Q. Did that man have any fire arms? A. Yes, sir.

Q. What kind? A. Shot gun.

Q. Did you meet any more people?

A. I could not say whether I met any more or not.
Q. When you got home what did you see?
A. When I got down there I met this man and he said we would better not go down there that they had started that war—that I had better not go down by the school house but I could go by the old road that cuts through there, and this little boy who was driving the livery team, he took me off by the woods, and we got out just about where we were
1149 camped and when we got down there, there were 25 or 30 down there with guns, and they finally lit a match to some hay that was down there and was going to burn up my wagons, and I asked him what the devil he meant and he said, "This man is all right and he is going to work you men," so they put the fire out and ordered me to get on round the hill where the rest of the men were and get my family out of the way so I started and went round the hill and I staid there until after these fellows come round and said, "It is all off" and the tipples were all afire and we stayed just as long as we could.
Q. Do you know who they were?
A. Two miners come by and asked for a drink of water.
Q. Were they men who had been working there?
A. I could not tell. Just as I said, I didn't know any of them by name. Two or three I was acquainted with but the majority of them people I just knew by sight, that is all.
Q. Did you do anything about moving any coal cars?
A. No, sir, I didn't myself.
Q. Your boys did? A. Yes, sir.
Q. They are here too? A. Yes, sir.
Q. And they used your team?
A. Yes, sir, I owned the teams.
Q. Now, the next day did you see a powder house burn up? A. Yes, sir.
1150 Q. Will you tell about that?
A. Yes, sir, I went down there me and a fellow by the name of Fred Bryant and somebody whose name I can not remember, but he lived just across the creek from where our mine was a little down the creek.
Q. Do you know who he was?
A. We went by up there to just look at the woods like hundreds of people did. They burned everything up on the place except that powder house. It was a kind of warehouse, and there was a store room in the way and they had opened up the house and somebody had set fire to some bushes, somebody had, and there was a lot of paper and rubbish there, and we had just got to the blacksmith [ship] where it had burnt

down when I seen a little blaze raise up and the wind was blowing from the east that day and it blowed back toward the house, and we started from there and hallowed them to get away from there and everybody that I seen was running away from there. It was not confined and of course did no damage, just made a big puff and that was all. We didn't stop for a quarter of a mile down the road. When it happened we were in the clear. It didn't do no damage at all. It didn't blow anything away, was just a big puff. There were shovels, lamps, picks and things of that kind scattered around there; but it was not confined so didn't hurt anybody.

Q. Several days after that did you see some man up
1151 at the store with a gun? A. Yes, sir.

Q. Do you know who he was? A. No.

Q. Do you know John Mastall?

A. Don't ask me that. It was a foreigner that had the gun.

Q. It was at the store there at Prairie Creek, was it?

A. Yes, sir, a little store there in that little town called Prairie Creek.

Q. What was said at that time?

A. He was cleaning up that gun, and he called the gun "he", and he said, "He fight twice, he can fight again,"—he was cleaning it up. It was at the store facing south—on a little street running east and west. I don't remember the name, but it was a foreigner who ran a little store down there.

Q. Do you remember John Shaleen? A. I don't know.

Q. Do you remember two or three months after the big battle some men came down to work the drift mine there at Prairie Creek after the big battle? A. Yes, sir.

Q. Who did they have with them?

A. Well, sir, they had some miners, some mules, wagons and some marshals, United States marshals, if I am not mistaken. They had some law of some kind with them.

1152 Q. Do you remember the night some buildings were burnt up? A. No, sir.

Q. I don't mean do you remember the date, but do you remember the occurrence? A. Yes, sir.

Q. What happened?

A. Directly after dark they went down there and set them houses afire.

Q. Do you know who set them afire?

A. I don't know positive, of course I recognized some faces by the fact them people worked for me.

Q. Whose face did you recognize?

A. A fellow by the name of Clint Burris, and some fellow named Menick—I don't remember the first name.

Q. Remember any others?

A. Well a fellow, they called him Sandy, Sandy Robinson; it has been so long ago I have tried to forget all this, and it has been so long ago I can not remember.

Q. Were you in Hartford the morning of that day?

A. Yes, sir.

Q. Did you hear any discussion amongst the people of Hartford on that day as to anything that was going to happen? A. Oh, yes, sir.

Q. What was that?

1153 A. The scabs had come back to work and that they didn't aim to let them stay; that they aimed to go out tonight and scare them away. And I went out to the mine and they were going to have this trouble over again, and I went down there and told the boys to quit working and I said, "Go away from here as quick as you can; If they start another war down here we might be in the line." So I went down there and met these men and I told them they had better leave there, and they said, "Why?" and they kind of laughed at the idea. They said they had the law, and I said . . .

Q. How long did you operate that mine down there?

A. I think about three or four months.

Q. You operated it with Union men? A. Yes, sir.

Q. Did you have any trouble?

A. Nothing only strikes.

Q. How many strikes did you have? Answer the question please. A. I could not say positively.

Q. How often did you have strikes?

A. I never kept any count of them—about once a week as a rule.

Q. Did Frank Scofield tell you when you saw him after the battle what it was that started the battle?

A. Yes, sir.

Q. What did he tell you?

1154 A. Well, I jumped on to him about they having this battle and not notifying us to get out of the way so we would have a little chance to get away. "Well," he said, "it was pulled off before it was expected," that a couple of miners got drunk and went down there and fired on the scabs and the scabs fired back and that is what started it before they expected it.

Q. How long after the battle was this that he told you this, if you know? A. The next day.

Q. Did you hear any discussion at this time by the Union men as to the shooting up of Frogtown, around the time of this battle?

A. Talk a little louder, I am just a little hard of hearing.
Q. All right I will. A. I didn't at that time, but after.
Q. How soon afterwards?
A. Oh, I don't know positively. I would not say, but something like a week or ten days.
Q. And what was that discussion?
A. You would see the people in bunches talking and they would come up and talk to me because I was on their side and they just remarked down there that they knew one way they could get a battle started off, if they went down there and shot up Frog Town; that they didn't suppose there was a scab any closer than down there. They didn't care to talk before me; I aint got no sides, for or against, and I am going to tell it to you like I know it.

1155 Q. When you spoke of the wire fence you meant the wire fence that was around the Bache-Denman mine? A. They said they didn't suppose there had been a scab out of there since they had been there.

Q. Were you afraid of the scabs coming out and interfering with you or hurting you? Were you afraid of the men in the Bache-Denman property coming out and doing any damage to you or any of your people?
A. No, sir, not a bit. They were friendly with us. They hauled water from the same spring that we got water from and we met up with them scabs up there often; never said a word only just to speak. I was not afraid of them at all. Of course I suspected that they didn't favor me very much but at the same time they never interfered or said a word to us out of the way at all.
Q. By the building you have referred to as the School House; was that the Union Hall of the Prairie Creek Local?
A. Yes, sir.
Q. The Union owned the building?
A. No, sir, I don't think they did. It was called a school house and they met there on Thursday nights if I remember —Thursday or Wednesday night—I can not say positively which; but it was one or the other. They had a Union meeting there one of those nights. It was what they called the Prairie Creek Local met there.

1156 Q. I didn't understand; did you live in a house up there before you were told about this battle coming off? A. No, sir.
Q. Where did you live?
A. Lived in some tents. I could not get no house up there and I got some tents and camped until after the little show was over.
Q. How many tents did you get?

A. I had three. Then I moved up in a house.

Q. After the battle was over?

A. Yes, sir, I moved up in a house that belonged to that man Looper, Rooper, or Loper—whichever it is. I got that house from him.

Q. Was your property in any way damaged at the time of the battle or afterwards?

A. No, sir, they never bothered my stuff at all.

Q. What was in the shanty that burnt up the day after the battle?

A. Well, sir, I never invoiced it. I seen a lot of miner's supplies, buckets and lamps, picks and shovels, fuse and such stuff as they had, little sledges that they use in the mines, and some stuff like that and a lot of powder piled up in the south side of the house. It didn't concern me and I didn't pay any attention to this stuff. I didn't want to know anything about it anyway."

Mr. Warrum: I will read the cross-examination.

"Q. I believe, do you hear me now? A. Yes, sir.

1157 Q. I believe you said that about the week after the battle of July 17th, 1914, you heard some of the boys talking about the shooting up of Frogtown? A. Yes, sir.

Q. You testified to that a moment ago? A. Yes, sir.

Q. Was that the first you had heard about it, about the plan?

A. I didn't say positively. I don't remember—about a week I said.

Q. It was sometime after the battle?

A. Yes, sir, it was not before.

Q. And what was it they said?

A. They told me, "Some of them fellows shot up Frog Town." They didn't shoot the town, they shot down into the town and laid it on the scabs, in order to get a battle started.

Q. Didn't you state a moment ago on direct examination that they were going to shoot up Frog Town and that would give them an excuse for the battle?

A. No, sir, I didn't say that.

Q. You never testified to this incident in the other examination? A. No, sir.

Q. When did the first recollection of it occur to you?

A. Just directly after the battle.

1158 Q. But you didn't testify when your deposition was taken before as to this incident of the men telling you they had shot up Frog Town?

A. That was about ten years ago and my memory aint so good as it might be.

Q. Did you testify on a former hearing about the shooting up of Frog Town? A. I think I did.
Q. You think you did?
A. I answered any question he asked me honestly, just like I will you.
Q. Have you talked with Mr. Finley recently about this case? A. Yes, sir.
Q. You answered any question he would ask?
A. Yes, sir, and I aim to answer anything you ask me if it is the truth.
Q. And you think you testified in your former deposition about this incident of the shooting up of Frog Town?
A. Yes, sir."

Mr. Drinker: I will read the Re-direct examination.

"Q. How old are you, MR. WESTON?
A. I am sixty-one years old the 19th of this month and my recollection isn't as good as it was years ago.

1159 Mr. Drinker: We offer, from page 1814 of the record in the former trial, the testimony of F. A. YOUMANS. We have an agreement with Judge Youmans, your Honor, that we will read his testimony, although he is within the jurisdiction of the court.

The Court: Very well.

Mr. Drinker (reading):

"Q. What is your name? A. F. A. Youmans.
Q. You are the judge of the Federal Court of the Western Division of Arkansas? A. I am.
Q. You have been for how many years?
A. Six years last June.
Q. You held that position in June and July, 1914?
A. I did.
Q. Referring to July 16th, 1914, the night before the battle at Prairie Creek No. 4, I will ask you if you received a telephone call. A. I did.
Q. At about what time?
A. My recollection is that it was between 9.00 and 10.00 o'clock at night.

Will you state who the man said he was, and what was said?

A. He said that his name was McLachlan, that he was at Hartford; that some women had just come in to Hartford from the neighborhood of the Bache & Denman Mines; and

my recollection is he said Frogtown, but I may how-
1160 ever be mistaken about that, but I got the information that it was in the neighborhood of those mines. He said that the women reported that their houses had been shot into by some men at these mines, and asked me to have the men arrested by the marshals who were there. I said to him there was no marshals there, and his reply to that was 'Is that so?' I told him, 'No'; I understood the marshals had been withdrawn the day before, or that day, and I told him even if they were there, I had no authority to order marshals to make an arrest; that the only way in which they could make an arrest would be to have placed in their hands a warrant for a certain individual, and in order to obtain a warrant a complaint must be made before the proper official, having authority to issue the warrant. I then told him that if he knew of any facts, or anybody else there knew of any facts that in his judgment warrant the arrest of any of the men it was his duty to go before a magistrate and make complaint as the law required, and have a warrant issued, and put it in the hands of the state officials, so that arrests could be made. He then said that the officers were not willing to make an arrest because of the injunction. My reply to him was that he injunction did not protect any man at those mines from the violation of the law; that that injunction simply protected the property and the men who were there against assault and attacks from other parties, but did not protect them in any degree in regard to a violation of the law, and that any state officer who had authority, and armed with a warrant, had a perfect right to go and make an arrest, whenever he was armed with that authority.

1161 He then asked that I call up the sheriff and tell him to make the arrest, and to advise him of his rights. I said, 'I won't do that, Mr. McLachlan; in the first place I have no authority to direct any state officer what he shall do or the sheriff; in the second place, the sheriff has not asked me to give him any information in regard to anything, and in the third place, it is not necessary, because the sheriff knows his duties and the extent of his authority just as well as I do. But, if the sheriff, or any constable, after he has a warrant in his hands, desires any information from me as to the execution of the warrant, and will apply to me for it, I will give him the information gladly;' Now, that was about the extent of the conversation.

Q. Do you know who McLachlan was?

A. Well, the information that I had with regard to the identity of Mr. McLachlan was simply such as I had picked up by reason of his being present in the court room here when certain proceedings were going on. In May, I think it was, and then during July. I never met McLachlan personally; I just know of a Mr. McLachlan being present, and getting the information in some way that that was Mr. McLachlan, and that he was some officer of the United Mine Workers. That is all I know.

Q. Some time previous to that, Judge Youmans, did you receive through the United States Mail a letter?

A. No, not previous. It was after that that I received the letter; this was on the night of the 16th.

Q. When was that letter received by you?

1162 A. My recollection is that it was on the 27th of July.

Q. Do you know what became of that letter?

A. Yes, sir.

Q. Will you state?

A. The letter was turned over to Mr. Hull, representing the Attorney General—yourself—and a postoffice inspector whose name I have forgotten, and my recollection is a Mr. Harris, who was connected with the Secret Service of the United States. My recollection is that these three men came into my room and requested that I deliver the letter to the postoffice inspector, and my recollection is that I gave it to him.

Q. Have you ever seen the letter since?

A. I never have."

Mr. Drinker: In this connection, we offer the testimony of Mr. Hull, proving the letter, Exhibit 59:

"Q. Your name is ROGER HULL? A. Yes, sir.

Q. Mr. Hull, in the year 1914, were you here in Fort Smith at the time that this matter of this letter came up? A. I was.

Q. In what capacity were you here?

A. I was here as a special assistant to the Attorney General of the United States.

Q. You heard the statement of Judge Youmans, as to a letter being turned over. What became of the letter?

A. It was used before the Grand Jury, and I think was sent back to the Department at Washington. I asked the Department for that original, and they have been unable to find it.

1163 Q. I show you what purports to be a copy of a letter, which appears as Plaintiffs Exhibit 59, and will ask you to examine that, and see if that is a copy of that letter, regarding which Judge Youmans testified.

A. Exhibit 59 is the orginal of the indictment returned in this court by a grand jury—

A. The indictment is signed by myself, as special assistant to the Attorney General, and a part of the indictment consists of this letter, a copy of this letter, and I copied this letter from the original handed to me, or to the postoffice inspector, and compared it with the original before signing the indictment on the next page; and before it was returned by the Grand Jury.

Q. Is that then a true copy of the letter? A. It is."

Mr. Drinker: And we will resume again the testimony of Judge Youmans:

"Q. I hand you, Judge Youmans, Plaintiffs Exhibit 59, which contains what purports to be a copy of that letter, and I will ask you to read that, and see if you remember that that is in substance a copy of the letter you received.

A. My recollection is that this is an exact copy.

Q. Is an exact copy? A. Yes, sir.

Q. Did you receive that letter through the United States Mail? A. I did.

Q. (By Mr. Hull.) Judge Youmans, did one James G. Crossley plead guilty before your Honor in this court,
1164 in this court room, at some time subsequent to the date of this letter, under this indictment, for writing and sending this letter to your Honor? A. He did."

Mr. Drinker: I will read the letter:

"July 27, 1914.

Judge Youmans,

Dear Sir:

You know the acts you have decided upon. As a warning friend we caution you to be more considerate upon the administration of your decisions. You are notified to comply with the requirements of your office. If such is not [compiled] with very shortly there is likely to be an unexpected change between your soul and fleshly temple, and you won't know the day or time or by what means such will take place. Still we don't want to act cowardly but give you a little time to act differently. At any rate you will have a little time for future preparation for that place called Heaven. You are weighed

in the balance and found wanting. There is a great change soon to happen.

(Signed) FOREWARNED.

This is a barking dog and if teased much longer will bite.

(Signed) PRESIDENT OF COMMITTEE."

"Q. (By Mr. Hull) I will ask you one more question, Judge Youmans. What proceedings, if any, in connection with these mining troubles, were pending at the time that you received that letter, before your Honor?

A. Certain contempt proceedings.

Q. Do you remember the date upon which your Honor rendered the decision in the contempt proceedings?

1165 A. My recollection is it was about the first of September following.

Cross Examination

By Mr. Warrum:

Q. I understand that the author of this anonymous letter pleaded guilty before your Honor later? A. He did.

Q. What was his name? A. His name was Crossley.

Q. Do you remember his first name?

A. I don't remember it now.

Q. James Crossley? A. I think that was it.

Q. Did he plead guilty, or was there some evidence introduced?

A. There was no evidence, he pleaded guilty. That is my recollection. Mr. Covington represented him, and he can probably refresh my memory, but my recollection is there was no evidence introduced, but I don't remember. If there was any evidence introduced, but I dont think there was.

Q. He was sentenced to prison?

A. He was sentenced to jail, my recollection is for three months."

Mr. Drinker: We offer, from page 2471 of the record in the former trial, plaintiffs' Exhibit 210, eighth semi-annual report of the United Mine Workers of America, District 21, from October 1st, 1915, to March 31st, 1916, on page 10 thereof, under the heading "Pension List", "Old Age Pension, James Crossley, $78."

1166 (Whereupon, at 4.35 o'clock P. M., after the usual admonition was given by the court to the jury, an adjournment was taken until Friday, the 19th day of October, 1923, at 10.00 o'clock A. M.)

1167 Ft. Smith, Arkansas, October 19, 1923.

Pursuant to adjournment, at 10:00 o'clock A. M., court reconvened, the parties appearing as before, and the following further proceedings were had and entered of record:

The Court: Proceed with the trial.

Mr. Lucas: We will call Mr. Bohannon.

WILL BOHANNAN, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Will you state your full name? A. Will Bohannan.
Q. Where do you live?
A. Spadra, Arkansas, Johnson County.
Q. What is your business? A. Coal digging.
Q. Coal digging? A. Yes, sir.
Q. Are you digging coal actively at the present time?
A. Yes, sir.
Q. Are you a member of the United Mine Workers?
A. Yes, sir.
Q. Have I this morning furnished you with a copy of the testimony you gave on the previous trial? A. Yes, sir.
Q. I read that testimony over to you? A. Yes, sir.
1168 Q. And told you I would ask you the same questions this morning? A. Yes, sir.
Q. Were you working for the Bache-Denman Coal Company in 1914? A. Yes, sir.
Q. Were you engaged by them as a coal digger?
A. Yes, sir.
Q. Did you actually dig coal for them?
A. I didn't really dig coal at that time, no. They hadn't got the water out.
Q. Why were you not digging coal?
A. They hadn't got the water out of the time at the time I left there.
Q. They hadn't got the water out?
A. They hadn't got the water out of the mine at the time I left there.
Q. And it was not possible for them to have coal dug until they got the water out? A. It was not.
Q. And what were you doing until they began digging coal?
A. The first few days I guarded, and the balance of the time I was on the wagon, hauling provisions from town to the mine.

Q. For a few days you guarded the property?
A. Yes, sir.
Q. Then you went on the provision wagon? A. Yes, sir.
Q. Is that correct? A. That is correct.
1169 Q. Do you remember, in connection with one of your visits to town with the provision wagon, anything happening in the town of— was it Midland?
A. Yes. I was arrested there.
Q. Will you describe just what took place that day?
A. Yes, sir, to the best of my knowledge.
Q. Talk up loudly so the last juror can hear.
A. Me and Charley Cheek and Levi Brown went to town after some bread and a cook stove. We got it at the Midland Valley depot. While we were loading that there was a gang of men gathered on the corner, and when we started off they commenced rocking us.
Q. Who commenced rocking you?
A. Yes, sir. I suppose we must have got two blocks from the depot.
Q. Who were those who rocked you?
A. One was Milo Colo. I knowed him.
Q. What was his name? A. Milo Colo.
Q. Was it "Milo" or "Moro"?
A. Milo or "Moro", whichever they call it.
Q. (Moro) Colo? A. Yes, sir.
Q. You knew him personally? A. Yes, sir.
Q. He had been a coal digger with you before that?
A. Yes, sir. I hadn't dug coal with him, but he was a coal digger in that field.
1170 Q. Was he a union miner, to your knowledge?
A. Yes, sir.
Q. Go ahead.
A. When they commenced rocking us the wagon stopped, and Brown was driving the wagon and was driving pretty peart, and when the wagon stopped I got down off of the wagon and set my gun down at the wheel on the ground, and they come on down and arrested us three and carried us back to the coal office, and we give bond for trial. I believe, if I am not mistaken, that was Tuesday, and the Thursday following they had a trial.
Q. Were you fined? A. Yes, sir.
Q. Were the other two men with you fined? A. Yes, sir.
Q. Did you see the men there that were rocking you? Were they arrested?
A. No, sir, they were not; not that I know of.

Q. Where was your gun that you say you took out and put alongside the wheel?

A. It was setting down under the spring seat.

Q. You didn't have it in your hands at the time they threw the rocks? A. No, sir, I didn't.

Q. Did you point that gun at anybody? A. I did not.

Q. Did you point at anybody after you took it out of the wagon?

A. No, sir, I didn't. I set it by the side of a bread
1171 basket up against the wagon, by the wheel.

Q. Did you see anybody else point a gun at these men?

A. No, sir. Nobody but me and Charley Cheek had a gun. Levi Brown didn't have any.

Q. Who prosecuted this case when you were fined $100?

A. That prosecuting attorney over there. I will tell you his name in a minute.

Q. Counsel for defendants suggest that I refresh your memory. Was it Paul Little?

A. Paul Little, yes, sir.

Q. Do you recall what Paul Little said when he opened your case?

A. I don't know that I [can't] state exactly the words, but I think I can come pretty near it. He said the case didn't amount to very much; that the union men had laid their shovels down and the scabs had come in and picked them up and were taking bread and meat out of the union children's mouths, to the best of my knowledge.

Q. That is the way he opened the case when you were fined? A. That is the way he opened the case.

Q. How long have you been a member of the union?

A. I have been a member of the union something like 22 or 23 years now.

Q. 22 or 23 years? A. Yes, sir.

Q. Previous to 1914 how long had you been a coal digger?

A. 12 or 15 years, something like that.

Q. So you were an experienced coal digger when you
1172 were employed by Bache-Denman? A. I sure was.

Q. Now, Mr. Bohannan, just how long were you at the Bache-Denman mine?

A. Well, I couldn't say positively. You know, that has been a good long while.

Q. What was the occasion that took you away from the mines? What caused you to leave? A. I got shot.

Q. You got shot? A. Accidentally.

Q. Will you describe that to the court and jury?

A. One evening, one pay evening, they was paying off, and I set my gun down on the step, and I and Riley Bailey was reading a letter, and I had my arm around his shoulder, like that (indicating), and Bob Bly run up the steps, and as he run up the steps he knocked the gun loose and it fell through the steps and the hammer hit the step and it went off and went through my arm and hit Riley Bailey when he was standing there.

Q. You were standing with your arm over Riley Bailey's shoulder? A. Yes, sir, something like that (indicating).

Q. You were both reading a letter?

A. Reading a letter.

Q. And the bullet from that gun that was knocked down went through your arm and went into Riley Bailey also?

A. Yes, sir.

Q. Had there been any fight?

1173 A. No, sir, no trouble at all.

Q. Were you quarreling with Riley Bailey?

A. No, sir.

Q. Were you quarreling with Bob Bly, who knocked the gun down?

A. No, sir. We was both good friends, and are friends today.

Q. How did you happen to put that gun down there?

A. When we started to read the letter, I set it down by the step.

Mr. Warrum: If the court please, the defendants separately object to this testimony. This might be proper on rebuttal, if the defense should undertake to show that there was some difficulty there.

The Court: I should think so. The plaintiffs are certainly not called upon to disprove anything of that kind at this [kind].

Mr. Lucas: I might suggest we have had the benefit of a previous trial.

The Court: We should have an orderly system of trial, notwithstanding that fact. If anything of that kind should develop, you may offer this in rebuttal.

Mr. Lucas: Previous to this trial there was a contempt and injunction case, and they brought out a number of these features.

The Court: It has not happened in this case.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Q. Mr. Bohannan, did I this morning take the pay roll of the Bache-Denman Coal Company during 1914 and go over the names on that pay roll?

1174 A. Yes, sir.

Q. Did you recall some of the names on that pay roll as men that were there during the time you were there?

A. Yes, sir.

Q. Were there any of those names that you did not recall?

A. Yes, sir, there was several names you called out that I didn't know.

Q. Some of the men that came after you left?

A. Yes, sir.

Q. And you didn't know them?

A. I didn't know them.

Q. Do you have any idea how many men were there, approximately, while you were there?

A. Well, by the time I left there must have been upwards, [do] the best of my knowledge, of 50 or 60, all told.

Mr. Lucas: If the court please, I would like to have the witness state how many of those men were, to his personal knowledge, experienced coal diggers. Of the 50 or 60 there were 33 that he personally knew. To shorten the record, I would like to have that put in the record.

Mr. Warrum: It is immaterial. It is also suggestive, in the manner in which the offer is made.

Mr. Lucas: We should like to read that into the record.

The Court: What is the purpose of it?

Mr. Lucas: To show the situation at the mine at that time. As this witness has stated, the company was engaged at that time in pumping out the water. They had engaged, however, certain men for the purpose of digging coal. This
1175 witness has stated he was an experienced coal digger.

The Court: Does the pay roll of the company show whom they engaged to dig coal?

Mr. Lucas: Yes, your Honor. This witness, however, will show that those men had been, to his knowledge, previous coal diggers, and experienced coal diggers.

The Court: Would it not be the presumption that if a man is employed to dig coal he is a coal digger? I did not sup-

pose a company would hire men to dig coal who were not coal diggers.

Mr. Lucas: Yes, your Honor. Necessarily, about a mine there are a certain number of men who are not coal diggers, "company men", as they call them. We would like to show just what the situation was at that time, how many were coal diggers and how few of them were guards, just how many guards were there.

The Court: How many guards were there might be very important.

Mr. Warrum: If they will ask that, we will not object.

The Court: That might be very important, but I can not see the importance of the number of coal diggers that were there.

To which ruling and action of the court the plaintiffs at the time duly excepted and still except.

Q. Mr. Bohannan, during the time you were there how many guards were there, men guarding the property?
A. I couldn't say positively how many there was.
Q. Do you know approximately?
1176 A. No, sir, I don't know.

The Court: Isn't there someone connected with the mine that would know all about this?

Mr. Lucas: Yes, your honor. We can show that. That is all.

Cross Examination.

By Mr. Warrum:
Q. Paul Little, who prosecuted you, was the regular prosecuting attorney over there? A. At that time.
Q. And afterwards became circuit judge of that circuit? Is that right? A. Yes, sir.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

Lee Bishop, called as a witness in behalf of plaintiffs, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Will you state your full name? A. Lee Bishop.
Q. Where do you live? A. I live here now.
Q. What is your business?
A. Well, I am chief engineer at the Goldman Hotel.
Q. Were you living in Midland in 1914?
A. Yes, sir.

1177 Q. Do you remember the occasion of hearing Pete Stewart make a speech in front of McGee's drug store in Midland? A. Yes, sir.
Q. Do you remember when it was? A. 1914.
Q. Do you remember the date or approximate date?
A. Well, I think it was about the 25th.
Q. Talk up loud so we can hear you.
A. About the 25th of—— I forget what month it was.
Q. Beg pardon. I didn't hear you.
A. I forget what month.
Q. Was it in the spring of the year?
A. Yes, sir, in the spring of the year.
Q. Did you testify in the contempt proceedings in this same court room? A. Yes, sir.
Q. At that time, to refresh your memory, did you testify it was the 25th of May?
A. 25th of May, yes, sir.
Q. Will you state what you remember—by the way, who was Pete Stewart? Do you know who he was?
A. He was the United Mine Workers' president.

The Court: Speak up so everybody can hear you.

The Witness: He was president of the United Mine Workers at that time.

Q. President of the United Mine Workers?
A. Yes, sir.

1178 Q. What did he say?
A. The best I can recollect, he said if they wanted some Colorado trouble, they could get it.
Q. If they wanted what?
A. Colorado trouble they could get it.
Q. What kind of trouble?
A. Colorado trouble they could get it.
Q. Colorado trouble? A. Yes, sir.
Q. If they wanted Colorado trouble they could get it?
A. Yes, sir.
Q. Did he say anything else about a gun?

A. Yes, sir, he said he would take his gun up and fight with them, the best I can recollect.

Q. The jury can't hear you. Will you say that again?

A. He said he would take up his gun and fight with them, the best I can recollect.

Q. That is fine. Keep your voice up that way. Did he make any reference to the open shop?

A. I don't remember. It has been 9 years since I heard that, you know, and I don't exactly remember.

Q. To refresh your memory, you were asked before: "Did he say anything about picking up a gun?" And you answered, "Yes, he said he would pick up a gun himself and die before he would see it go on the open shop basis." You made that answer? A. Yes, sir.

Q. And that answer was correct? A. Yes, sir.

1179 Q. What mine was he referring to when he said that?

A. No. 4.

Q. Prairie Creek No. 4? A. Yes, sir.

Q. Who was there at the time he made that speech?

A. The best I can recollect, there was Shelly, George Burnette.

Q. Was Mr. McGee there? A. Yes, sir.

Q. It was in front of his store? A. Yes, sir.

Q. To refresh your memory, was Jim Braser there?

A. Jim Braser was there, and George Howard.

Q. Bud Porter? A. Bud Porter, yes, he was there.

Q. Bud Porter was there? A. Yes, sir.

Q. Did Mr. Stewart say anything about a man named Riley Bailey?

A. Yes, sir, he said something about him kicking him in the ribs.

Q. Who kicked him in the ribs?

A. This Riley Bailey, I believe it was.

Q. Riley Bailey kicked Pete Stewart in the ribs?

A. Yes, sir. That was at Jamestown, I think.

Q. That happened at Jamestown? A. Yes, sir.

Q. Did he say anything in particular in reference to Bailey other than that?

1180 A. No, I don't remember. I wasn't out there all the time, and I didn't hear it all.

Mr. Lucas: Cross examine.

Cross Examination

By Mr. Warrum:

Q. Didn't he say that Riley Bailey, at Jamestown, had jumped upon him and beat him nearly to death because he was a union man?

A. He kicked him in the ribs, was what he said.
Q. That Riley Bailey had kicked Pete Stewart in the ribs?
A. Yes, sir.
Q. And he was complaining about it? Is that right?
A. Yes, sir, that is just about right.
Q. And they told him that Riley Bailey was there guarding at that time, at the Bache-Denman mine?
A. Yes, sir.
Q. And he made the remark that Riley Bailey, down at Clarksville, or Jamestown, had jumped on him and beaten him nearly to death?
A. He said Riley Bailey. He didn't say which one it was.
Q. He didn't say what?
A. He said Riley Bailey. I don't know whether that is the Riley Bailey or not. Of course, he just made the statement. That is all I could say.
Q. You testified that he stated, when they told him about Riley Bailey, he said, "Yes, that is the same fellow that jumped on me and beat me nearly to death down in Johnson County"? A. Yes, sir.
Q. "Broke my ribs and laid me up in the hospital"?
1181 A. Yes, sir.
Q. He said if they were going to have another Colorado down there he would get a gun himself? Is that what he said? A. Yes, sir.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness Excused.)

Mr. Lucas: We now offer to read the testimony of BUD PORTER, beginning on page 1711 of the record. Mr. Porter is now dead. His initials are J. T. (Reading):

"Q. State your name? A. Bud Porter.
Q. Your initials are J. T.? A. Yes, sir.
Q. Do you remember hearing Pete Stewart make a speech in front of McGee's drug store on or about May 25th, 1914?
A. Yes.
Q. Who were there present?
A. George Howard I believe was one and Bascom Menett, Brother York, I believe was his name, a preacher, and I don't remember what others.
Q. State to the best of your recollection what Pete Stewart said at that time?

A. He said that the Bache-Denman men were going up and down the public highway and that any man that wanted a gun could get one next week, that there would be another Colorado trouble out there and that rather than see that place run that he would go out there and die himself. He
1182 said that he was carrying a gun — no, that he was taking the responsibility on himself with regard to the guns that he would advise everyone else to carry one.

Q. What is your business, Mr. Porter?
A. I am a grocery man.
Q. Where? A. Drumright.
Q. Oklahoma? A. Yes."

Mr. Warrum: We waive the cross examination.

Mr. Lucas: The plaintiffs will read the cross examination, by Mr. Covington, then counsel for defendants (reading):

"Q. When was it you heard Pete Stewart make that statement? A. At Midland?
Q. Yes, at Midland.
A. It was in front of McGee's drug store one day.
Q. Can you fix the time? A. No, sir.
Q. With regard to the month— can you fix the month?
A. I believe it was May.
Q. You think it was May? A. Yes.
Q. How much of a crowd was in front of the drug store at that time? A. There were several, — I will say ten.
Q. Do you remember what anyone else said on that occasion?
1183 A. I don't know [is] I do.
Q. Did anyone else say anything,—whether you remember it or not?
A. Beside the statements Mr. Stewart made?
Q. Yes, besides what Mr. Stewart said?
A. There might have been, I don't remember.
Q. Was it a conversation or was he making a speech?
A. Well, he was standing out in the street.
Q. I will ask you if he did not say that the guards and non-union men at Camp 4 were insulting the women, shooting over the fields down there and arresting men in the public highway,—that they were insulting girls going to school, and that kind of conduct would bring on another Colorado, and rather than see that continue that he and others would take up arms? A. No.
Q. Were there anything said about the conduct of the guards at Prairie Creek? A. Not that I remember.

Q. Either by Mr. Stewart or by anyone else in that conversation? A. Not that I remember.

Q. You never heard anything with reference to their conduct relative to the insulting of women or girls, or the arresting of men in the highway, or making the fields of the farmers down there target grounds? A. No, sir.

Q. Did you know Peter Stewart?

A. Yes, when I saw him.

1184 Q. Were you on the sidewalk or inside of the store when this occurred? A. I was on the sidewalk.

Q. Were you a member of the crowd you speak of?

A. Yes, sir.

Redirect Examination

By Mr. Hull:

Q. You testified about this in the contempt proceedings, didn't you? A. Yes, sir.

Recross Examination

By Mr. Warrum:

Q. I did not quite catch for whom you were working at the time of this alleged conversation?

A. I was not working for anyone at that time.

Q. Were you employed by the Bache-Denman people at that time?

A. I was working for Ransom Gulley at the time of the riot and he was running the store for Bache-Denman.

Q. He was running the store for Bache-Denman?

A. Yes.

Q. Where was the store located? A. Out at the mine.

1185 JAMES ANDERSON MURRAY, of lawful age, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Mr. Murray, I gave you this statement here this morning of your previous testimony, did I not? A. Yes, sir.

Q. And you have read it over? A. Yes, sir.

Q. Where do you live?

A. Ten miles north of Clarksville, in Johnson County, this state.

Q. What is your occupation, Mr. Murray?

A. Farmer at the present.

Q. Did you in the spring of 1914, go to work for the Bache-Denman Coal Company at Prairie Creek? A. Yes, sir.

Q. Do you remember approximately when you went there?

A. I think it was in May.
Q. In May,—April or May?
A. April or May, one of the two months. It possibly could have been April.
Q. About the end of that month do you remember, the time that you were returning to the mine with J. S. Moore?
A. Yes, I remember that.
Q. Will you state where you were and what happened at that time?
A. I was returning back to the mine from this place.
1186 I was sent from here to the mines, and on my return down there, Mr. Moore, and I, we were stopped by some men supposed to be union men, near the switch that leaves the mines down there, the Prairie Creek Mine, and they would not let us go in there, they turned us back.
Q. Talk out loud so all the jurors can hear you?
A. Have they all heard now?
Q. You say they did what?
A. They turned us back, would not let us go on in there at all.
Q. Were you engaged to work in that mine?
A. Yes, sir.
Q. And they would not let you go there to start?
A. They would not let us go there at all.
Q. What did you do? A. Came back to Ft. Smith.
Q. When they turned you back where did you go right then?
A. We just followed the track up to Midland, I believe they call that little station down there, and on over to the Frisco tracks and they followed us, some of those boys, past the crossing, down the track for some ways; I don't know just how far; but quite a little ways.
Q. They followed you to see that you did not get in there?
A. Yes, sir, they followed us back to see we didn't get to the mines.
Q. Did they say anything about who was in the mines?
A. Yes, sir, they said there was a bunch of God damn scabs, they called them at that time, in there, and they were going to clean up on them; they were going to clean them out.
1187 Q. Did they say why they would not let you go in there?
A. They said it was a scab hole, and they would not let me go in there.
Q. Was there any reference made to the guns that the men had?

A. Yes, sir. They said they had a bunch of 30-30 Winchester's in there and they were going to get up against them; they were going to clean up there.

Q. They were going to do what?

A. They were going to crucify those boys, I believe they put it.

Q. They were union miners? A. Yes, sir.

Q. Were you in Hartford one time after that?

A. I never was in there.

Q. There is a mistake as to the place, you were asked at the previous trial whether you remembered being in Hartford on or about May 23, 1914, and heard some remarks made by Dan Wilcox?

A. That was at Hartman, a little station this side of Clarksville.

Q. Who was Dan Wilcox?

A. I don't know about him, only I knew at the time he was a railroad foreman, a son-in-law of Mr. Morris of Hartman.

Q. Was he a union man?

Mr. Warrum: Wait a minute. He might have been a member of the railroad union.

Q. Was he a member of the united mine workers?

A. I don't know whether he is a member of the order or not.

Q. To refresh your memory, were you asked what did he say, and where were you, and you answered that he
1188 said he was president of the local,—

Mr. Warrum: The defendants object because the testimony of the witness now,—the statement by Dan Wilcox made at Hartman, to this witness, could not be binding.

Mr. Lucas: The witness has only said he did not know him, but I judge under a conspiracy case, he can state what Mr. Wilcox said to him.

The Court: Yes, except as to who he was,—for instance, an officer or anything of that kind, it would not be competent evidence.

Mr. Lucas: If I may be permitted to have him answer that so we may have the privilege of showing later who this man was.

The Court: Very well.

To which ruling and action of the court the defendants at the time duly excepted and still except.

Q. I will continue. He said he was president of the local at Adamson, Oklahoma, and he said they were going to march,—

The Court: Have him state some independent matter that he might know about.

Q. What do you recall about what Mr. Wilcox said at that time?

A. Why he said that him and his,—that his fellow men at Adamson were going to come down there and help the boys at Prairie Creek route those fellows out of there.

Q. Route which fellows out?

A. The scabs they called them.

Q. At which place?

A. At the Prairie Creek Mine.

1189 Q. Did you understand him to refer to the union men in Oklahoma? A. Yes, sir.

Cross-Examination

By Mr. Warrum:

Q. Did you ever see this man Wilcox before that time?

A. No, sir.

Q. Did you ever see him since?

A. Not that I know of.

Q. He made this statement to you?

A. Not direct, he was talking to Mr.,—it was a merchant over in Hartman, I can't recall his name now.

Q. Did you know him? A. Yes, sir.

Q. Had you ever spoken to him before?

A. No, I didn't know Mr. Wilcox, no.

Q. You didn't know Mr. Wilcox? A. No, sir.

Q. Someone told you that was Mr. Wilcox?

A. That merchant told me who he was.

Q. Now, when you met these men, when you were with J. S. Moore, they were complaining about the Winchesters that were in the camp? A. I didn't hear any.

Q. Did they say they were going up against those Winchesters?

A. That is all the complaint I heard was right there, and then, when they made that remark.

1190 Q. They were complaining of the Winchesters that were in the camp? and said they were going against those Winchesters?

A. Yes, sir, that is what they said.

Q. When did you leave that camp?

A. I left it last on July 17th, 1914.
Q. There were Winchesters there, were there?
A. Yes, sir.
Q. How many? A. I don't know.
Q. Where there a hundred? A. I don't know.
Q. There was something between 75 and a hundred were there not? A. I don't know, I expect there was.

Redirect Examination

By Mr. Lucas:

Q. Mr. Warrum has asked whether they were complaining about the Winchesters, did you hear any complaint about the Winchesters out of the camp? A. No, sir.
Q. You heard no such complaint? A. No, sir.
Q. Did you hear any complaint about the conduct of the guards? A. No, sir.

Mr. Lucas: That is all.

The Court: Stand down.

(Witness excused)

WILLIAM HENRY ARGO, of lawful age, called as a witness on behalf of the plaintiffs, being first duly sworn, testified
1191 as follows:

Direct Examination

By Mr. Lucas:

Q. Will you give your full name to the reporter, please?
A. William Henry Argo.
Q. Mr. Argo, will you talk up loudly, so the last juror over here will be able to hear you? A. Yes, sir.
Q. Were you employed at the Bache-Denman Coal Company in 1914? A. Yes, sir.
Q. In what capacity?
A. Bookkeeper for Mine No. 1, and mine clerk.
Q. For which mine? A. Mammoth Vein No. 1.
Q. How long had you been employed in that capacity?
A. A little over three years.
Q. Were you at No. 4, working in the office on the 6th day of April, 1914, the day of the riot? A. Yes, sir.
Q. Will you state what occurred on that day, just describe fully to the [jurry] what you saw on that day?
A. There was a crowd from Huntington and Hartford that came to the office during the day.
Q. These men came from various directions?
A. Yes, sir.
Q. Did you see them assemble at any point?

A. The school house nearby there and at the office,—
1192 close to the office, where I was working in the office.
Q. Did any of them come up to the mine before the whole crowd came? A. A few, yes, sir.
Q. Do you remember who they were?
A. I cannot recall the names.
Q. Was there any committee that came up there?
A. Yes, sir.
Q. Who was on the committee?
A. John Menick and A. S. Howard.
Q. Is he called Ves Howard?
A. I don't know, I remember the initials, A. S. Howard.
Q. Was Jim Slankard there, one of the committee?
A. Yes, sir, he was there too.
Q. Who is he? A. The constable at Hartford.
Q. Were these three men union men that you just named?
A. I don't know whether they were union men or not,—yes, they were union men.
Q. Do you recall where Ves Howard had previously worked? A. At Mammoth Vein No. 1.
Q. And where had Menick worked? A. At No. 4.
Q. And worked there at the time it was union?
A. Yes, sir.
Q. Who did the speaking for the committee, if you recall?
A. Mr. Howard.
1193 Q. Who was in the office with you at that time?
A. Mr. Thresher and Mr. Gully, and the superintendent, Mr. Cameron.
Q. Do you recall Mr. Patterson and Mr. Hackett?
A. Yes, sir, Mr. Patterson was there, the elder gentleman and his son.
Q. What did the committee state as its purpose?
A. I couldn't understand what they had to say, I was over,—I was not close to them, I was in the office, but not close enough to hear everything, there was so much noise going on outside, I couldn't hear what they said.
Q. What was the crowd doing outside?
A. They were gathering around the mine, and over the property there.
Q. Who did you see in that crowd that you knew?
A. It would be difficult to recall all of them.

Mr. Lucas: I may be permitted to refresh his memory as he has identified some of them at the previous trial.

A. I saw Mr. Brook of the bank there.
Q. Who was that, A. O. Brook?
A. Yes, sir, cashier of the bank at Hartford.

Q. Did you see John Menick there? A. Yes, sir.
Q. Fred Todenhauffer? A. Yes, sir.
Q. Mr. Fitzgerald? A. Yes, sir.
1194 Q. Do you know Joe Overman? A. Yes, sir.
Q. Was he there? A. Yes, sir.
Q. Do you know Mr. Hunter, Nick Hunter?
A. Yes, sir.
Q. Did you know George Hunter?
A. Yes, sir, he was there too.
Q. We have had it fully described but do you remember seeing Looper and Syllsberry? A. Yes, sir.
Q. What happened to them?
A. They were beaten up at the boiler room and blacksmith shop.
Q. Were they seriously injured, to your knowledge?
A. Yes, sir.
Q. Who was with them, do you remember anybody else that was with them?
A. Mr. Syllsberry was the blacksmith, as I remember, at that time.
Q. Do you remember Mr. Searles? A. Yes, sir.
Q. Was he there at that time? A. Yes, sir.
Q. What did he do?
A. He ran off from the crowd during the demonstration there; he ran away.
Q. Did anybody make a speech? A. Mr. Slankard.
1195 Q. Where was he when he made that speech?
A. About 75 feet from the office, and up on something above the crowd, standing up above the crowd.
Q. What was he doing besides making a speech, did he do anything?
A. He had a gun and a handkerchief; I heard him through the window, standing up there talking to the crowd?
Q. What was he doing with the handkerchief?
A. He was waving it in the air.
Q. And in the other hand he had his gun? A. Yes, sir.
Q. Was it a pistol? A. It was a rifle.
Q. What did the crowd do after he had finished his speech?
A. They rushed in there to clean up some of the men. Mr. Bailey was one of the men, and a fellow, I believe his name was Barnes, they beat them up in there.
Q. Did you see anything else that the crowd did?
A. They went over the ropes, and up on the tipple, and put a flag up on top of No. 4 tipple.
Q. What flag?

A. They put a flag up there, looked like the United States flag.

Q. Did you see any other flag along with it?

A. They had a flag up there, something about the Union, that this is a union man's country, as well as I remember.

Q. Was it sort of a banner?

A. I didn't see all of it, I just saw the flag up there.

Q. Now, some time previous to this, did you have a
1196 conversation with a man named Reed? A. Yes, sir.

Q. Do you know where he had worked?

A. He worked at Mammoth Vein No. 1.

Q. During the time it was Union? A. Yes, sir.

Q. He was a Union Miner? A. Yes, sir.

Q. What was his first name?

A. They called him Speck.

Q. Speck Reed? A. Yes, sir.

Q. What did he say to you, Mr. Argo?

A. He told me that if they undertook to work that place open shop, or used scabs, they would not last very long, they would not last as long as Pat stayed in the Army.

Q. Did he ask if it was the purpose of the Company to go open shop? A. No, sir.

Q. He just said if they were going to, they would not last?

A. Yes, sir.

Q. When did you leave the company employ?

A. I left there a few days after that, three days, I believe after that. I was under a bond, you know, for my position, under a $10,000.00 bond, and I came to Ft. Smith to get relieved of that, so I could quit the company according to my contract with them.

1197 Q. Now, about the time that you were leaving, did you have occasion to go to Hartford? A. Yes, sir.

Q. Did you go there to take the train away?

A. Yes, sir. I went from here with Mr. Harris, to Hartford, and he was going there,—I was in conversation with him, and he told me I could ride with him to Hartford, and I told him I would and I went with him. We had our household goods and cows to look after down there, and I had to go to the bank to check up my account or the company's account. I was cashier at the mine and I had to balance my books up so that I could see the cashier there at the bank, and I was going to catch the train on out on the Rock Island for Wister, and on down to Oklahoma, where my wife and children were.

Q. When you were out at Hartford, did you have trouble with a man named McNamara?

A. I got beat up down there.

Q. He attacked you and beat you up? A. Yes, sir.
Q. Where did this take place?
A. In Burrison's Restaurant.
Q. In front of Burrison's Restaurant?
A. In Burrison's Restaurant.
Q. Who was Mr. McNamara?
A. I didn't know him.
Q. Was he a Union miner?
A. I didn't know him at all.
1198 Q. Did you know whether he was connected with any local union there?
A. No, sir, I didn't know it, because I didn't know the man.
Q. Did any of the men that saw the incident state whether he was? A. Yes, sir, they told me he was.
Q. What did they say?
A. On inquiry there at the time, when I first went in the restaurant, he brushed up against me in an intimidating way, and Mr. Hall, a friend of mine, that was bookkeeper for an affiliated company of Bache-Denman, the Dallas Coal Company, I asked him who the man was and he said "James McNamara", and I told Mr. Hall from the crowd around there, and his intimidation, it seemed that they had some personal grudge against me on account of working for the company and he told me it seemed that way too. I asked him to go and tell the constable, Mr. Goddard to come down there, and by that time this fellow came back in again, and sat down in a corner. I had my meal ordered to eat my supper, and he sat there and watched me while I was eating.
Q. Who were you with?
A. I was in the Cafe, I had ordered my supper.
Q. Now, this man that told you,—
A. That was Mr. Hall.
Q. He told you that was Jim McNamara, he told you who he was? A. Mr. Hall said that was who he was.
Q. What did he say?
A. I told him to go and see if he could find some of the officers to come there and protect me.
1199 Q. You don't understand. Did he tell you what office he held? A. He didn't tell me what office.
Q. Did you get any medical attention after this trouble?
A. No, sir.
Q. Did you attempt to get any? A. Yes, sir.
Q. State what happened in that connection?
A. I went into Mr. West's store, and Dr. Chambers shut his door when he saw me coming in there.

Q. Who was it that shut his door? A. Dr. Chambers.
Q. You attempted to go into his office? A. Yes, sir.
Q. Where did you go to get medical attention?
A. I came on down to the depot and got through the crowd the best way I could. I came to the depot, and the operator there helped tie my face up with a handkerchief; I was bleeding.
Q. Did you later on have a conversation with Dr. Chambers about this incident that you have related?
A. Yes, sir.
Q. What did he say to you?
A. I asked him here in the Main Hotel, why it was that he shut his door when I started into his office, and he told me that he did so because of his practice down there, it would injure his business, that personally he had nothing against me, but that was the only reason.
Q. Did he say anything more about what might have
1200 been the situation if you had been a union man?
A. Yes, sir, he told me I would have been treated kindly and they would have carried me around on a feather bed, I believe was the term that he used.
Q. Now, you were the bookkeeper and did not have to belong to the Union, is that correct? A. Yes, sir.
Q. A day or two after this riot at the mine, did somebody come to your house where you were living? A. Yes, sir.
Q. Will you state what happened, tell us about that, who was it came there?
A. About ten men in the crowd, Mr. Wynn,—
Q. How is that spelled? A. W-y-n-n.
Q. Is it W-y-n-n or G-w-y-n?
A. Yes, sir, G-w-y-n, yes, sir.
Q. Will you state what Mr. Gwyn said at that time?
A. He was with this crowd of men walking up toward the office, and was close to my house, which was right close to the mine office of No. 1. They came up to the house and called me out and told me I was in danger and he would advise me to leave and I told him I would leave as quick as I could do so. He said he would not personally injure me himself, but that there were men that would, and I told him that I would get away from there as quick as I possibly could.
Q. Did you see anybody else in that crowd when Mr.
1201 Gwyn gave you this warning, did you see anybody else in the crowd that you knew?
A. Clint Burris, was about the only man that I recognized.
Q. Where had Clint Burris worked when you knew him?
A. No. 4.

Q. Was that open shop or Union at that time?
A. He had worked there when it was Union.

Mr. Lucas: that is all.

Cross-Examination

By Mr. Warrum:

Q. How many people were out there on April 6th?
A. I would judge about a thousand or twelve hundred.
Q. There were miners there? A. Yes, sir.
Q. Bankers there? A. Yes, sir.
Q. Merchants there? A. Yes, sir.
Q. Doctors there? A. I don't remember that.
Q. Was Dr. Chambers there? A. I don't remember.
Q. And lawyers? A. I don't remember.
Q. How about farmers, farmers there?
A. I don't know.
Q. Did you see John Bumpus that day?
1202 A. I don't remember.
Q. There were men, women and children?
A. Many women, yes, sir.
Q. They came in wagons and automobiles and horse back and walking?
A. They came in buggies and on horses,—not very many horses, and buggies, but mostly walking.
Q. These men that you speak of that you identified on your direct examination, Mr. Brook, Mr. Overman and some of the others, they were all there in the office, were they, within the enclosure, with the crowd?
A. They were not inside the rope.
Q. They were not inside the rope? A. Yes, sir.
Q. None of these men, Howard, or Fitzgerald or Brook or Overman, or any of them,—none of them come within the enclosure? Did you get out of the office at all?
A. I did not until after the crowd had dispersed.
Q. You were in the office while they were there?
A. Yes, sir.
Q. And you identified the people that you saw from the office? A. Yes, sir, through the window.
Q. They were all in the enclosure were they not?
A. They broke the ropes, the crowd was all around there.
Q. Now, you saw Slankard? A. Yes, sir.
Q. On some sort of an elevation, with his handkerchief and a rifle? A. Yes, sir.
1203 Q. Did you testify on a former trial that was a rifle he had taken from a guard?
A. I suppose there is where he got it.

Q. There were how many guards that day, do you know of any besides Barnes? And Bailey?

A. I don't remember how many; I don't know whether they were guards or not.

Q. If he got a rifle from a guard it was after the guard was disarmed, was it not; so his speech was made after the attack on the guards, and not before is that right?

A. It was made before the attack on the guards.

Q. Did he have a rifle in his hands that he had taken from a [buard]? A. Yes, sir.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness excused)

Mrs. William H. Argo, of lawful age, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination

By Mr. Lucas:

Q. Mrs. Argo, you are the wife of the gentleman that just testified? A. Yes, sir.

Q. You were living at Prairie Creek during 1914, were you? A. Yes, sir.

1204 Q. Do you remember the occasion of the riot that took place there? A. Yes, sir.

Q. Were you personally present on that day?

A. No, sir, I was in Ft. Smith until late in the evening and I returned to Midland, and when I got there, I learned of the riot, and the Huntington brass band boys were getting on there, and they made the assertion that they had "tore up hell at Prairie Creek", and I learned then that Mr. Argo was on his way to Ft. Smith. I stayed there at Midland for a few days.

Q. When you got down there of course the trouble was all over? A. Yes, sir.

Q. Did you make any inquiry about your husband when you got there? A. I did.

Q. At what place?

A. At Midland; I asked Mr. Cameron, the superintendent and he said Mr. Argo was on his way to Ft. Smith, with the injured men and that is my reason for staying in Midland.

Q. Do you recall a few days after this a visit that was made to your house by any of the union miners?

A. There was a crowd of men out in front of our place, about ten, probably ten or fifteen feet from the front gate.

They were standing there and Mr. William J. Gwyn called Mr. Argo to the back gate. He said to Mr. Argo "Personally I would not hurt you but there are men that will, and I advise you and your wife to leave.

Q. And when he said this the group of men were,—
1205 A. Standing about ten or fifteen feet from the front gate, but he called Mr. Argo back to the back gate.
Q. How is that name spelled?
A. W. J. G-y-w-n. He was secretary of the local union.
Q. At what place? A. At Mammoth Vein No. 1.
Q. Did you see anybody else in that crowd that you knew?
A. I remember Jim Priddy.
Q. Who was he?
A. One of the miners at Prairie Creek.
Q. Was he a miner when it worked Union?
A. Yes, sir.
Q. And was a union miner to your knowledge?
A. Yes, sir.
Q. Did he hold any position with the union that you know of?
A. No, sir, not that I know of; he was a miner and worked in the mines.
Q. Did you leave after this conversation with Mr. Gwyn?
A. Yes, sir.
Q. You left Prairie Creek? A. Yes, sir.

Mr. Lucas: That is all.

Mr. Warrum: No questions.

The Court: Stand down.

(Witness excused)

A. W. McGee, of lawful age called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

1206 Direct Examination

By Mr. Drinker:
Q. What is your name, please? A. A. W. McGee.
Q. Where do you live now? A. At Boonville.
Q. Where did you live in 1914? A. Midland, Arkansas.
Q. What business were you engaged in?
A. Drug business.
Q. You had a drug store at Midland? A. Yes, sir.
Q. Where did you move from Midland?
A. Well, I moved from Midland to McCurtain, and stayed about six months, and moved back.

Q. When did you move? A. In May, 1915, and back,—
Q. How long did you live there before that?
A. I moved to Midland in 1907.
Q. And you had lived there for 7 years? A. Yes, sir.
Q. Eight years? A. Yes, sir.
Q. Were you present on May 25th or thereabouts, at your drug store, when you heard a speech by P. R. Stewart?
A. Yes, sir.
Q. Who was P. R. Stewart, at the time?
1207 A. He was president of District 21, I understood.
Q. That was 1914? A. Yes, sir.
Q. Now state who was there, to the best of your recollection, and how they come there and what was said by Mr. Stewart?
A. Pete Stewart and Paul Little drove up in front of my store.
Q. Who was Paul Little?
A. I think he was prosecuting attorney at the time.
Q. Of what county? A. Sebastian County.
Q. Go on.
A. And he got out of his car and went to the coal company's office.
Q. Went where?
A. Paul Little went to the coal company's office and Pete made a speech in front of my store.
Q. What coal company?
A. Bache-Denman, that was the only one there.
Q. What did Pete say?
A. I didn't hear all of his conversation, when he commenced or when he finished; I just heard a part of it, and I heard him say they could all have guns that wanted them, they could have another Colorado there at any time they wanted it.
Q. Who could have a Colorado?
A. He just motioned his hand to the crowd.
Q. He said "they", meaning the crowd?
A. Yes, sir, he said "you".
1208 Q. And what did he say about guns?
A. He said they could have all the guns they wanted.
Q. Did he say where they would get the guns?
A. No, sir.
Q. Mr. McGee, how many people were in Midland at that time, about how big a town was it?
A. I expect about eight hundred or a thousand.
Q. How far was it from Prairie Creek No. 4?
A. Two and a half or three miles.

Q. And what business were the men engaged in that lived in Midland?

A. Most of them were business men and coal miners, a majority of them.

Q. Were there more business men than coal miners?

A. No, sir.

Q. What proposition would you say, what per cent. of all the men in Midland, were coal miners?

A. I think 85 per cent.

Q. Were they all union men? A. Yes, sir.

Q. All of them? A. Yes, sir, supposed to be.

Q. They said they were?

A. Yes, sir, I did not belong to the union.

Q. You did not belong? A. No, sir.

Q. Now what mine did most of the men work in that lived in Midland?

A. Well, I believe most of them worked at No. 6 Central.

1209 Q. That was operated by the Central Coal & Coke Company? A. Yes, sir.

Q. And had nothing to do with Bache-Denman?

A. No, sir.

Q. Do you know Madge Hulsey? A. Yes, sir.

Q. Did he live there? A. Yes, sir.

Q. And Marion Hulsey? A. Yes, sir.

Q. Were they members of the union?

A. Yes, sir, they said so.

Q. Did you ever hear any conversation by either of the Hulseys about the company hoisting, the Bache-Denman Company [hoisitng] water, this conversation being about the time that they were running open shop?

A. Yes, sir, Madge Hulsey made a remark in the store, as I remember, that they were hoisting a little water, and it would break the company up the way they were getting it out.

Q. Did he say anything about the company shipping coal?

A. He said they would never ship any coal from there.

Q. Did you hear any other conversation by union miners during that period about the company shipping coal?

Mr. Warrum; Now, the defendants object to testimony of this kind, because it calls for an opinion and conclusion on the part of the witness,—

The Court: Of course it would be much better for him
1210 to state what he did.

Mr. Drinker: I asked if he heard it, and then I was going to ask what he heard.

The Court: Very well.

To which action and ruling of the court the defendants at the time duly excepted and still except.

Q. Did you hear any conversation by the miners relative to the Bache-Denman Company shipping coal, other than the one you stated? A. Well, I don't know that I did.
Q. That is a good answer. Did any of the union miners ever talk to you about selling goods to the Bache-Denman Company?
A. Well, they wanted a general boycott, of course.
Q. Do you know Tom Watson? A. Yes, sir.
Q. Was he a union miner? A. Yes, sir.
Q. Did he say anything to you about that?
A. Yes, sir, he said they were going to boycott everybody that sold the employees down there.
Q. What boys? A. The men that worked at No. 4.
Q. In the open shop mine? A. Yes, sir.
Q. He wanted you to do that? A. Yes, sir.
Q. Did he say anything about having spoken to any
1211 other merchants about that? A. Yes, sir.
Q. What did he say?
A. He said they had a petition.
Q. Who had a petition?
A. The committee had a [petion]; I don't remember who they were.
Q. A committee to which he belonged? A. Yes, sir.
Q. Did he say anything about a meeting they were having?
A. Yes, sir.
Q. What was that?
A. He said they were having a meeting, and wanted everybody to quit selling, and wanted me to go to the meeting with him.
Q. Did you go? A. Yes, sir.
Q. What was said at the meeting?
A. Well, they wanted a general boycott.
Q. How many people were at the meeting?
A. Well, I expect there were fifty.
Q. And where the merchants of Midland there?
A. The merchants and the coal miners.
Q. Who made any speeches at the meeting?

A. Well, Mr. Shaw made a speceh.
Q. Tom Shaw? A. Yes, sir.
Q. Was he a union miner? A. Yes, sir.
Q. Did he hold any office in the local, do you know?
1212 A. I don't know whether he did or not.
Q. Did he say he did? A. No, he didn't say.
Q. Did anybody else make a speech?
A. Well, I don't remember of anybody else.
Q. What did Mr. Shaw say?
A. Well, he didn't seem like he wanted to be so radical. He talked on that line more than anything else.
Q. Did he say anything about the merchants selling to the Bache-Denman people? A. Not directly, no.
Q. What do you mean by that, not directly?
A. He thought they ought not to be so radical, they ought to be more considerate on both sides, it seemed like.
Q. Now, you say that the most of the men at Midland worked at No. 6 Central? A. Yes, sir.
Q. Did you ever hear any discussion by those men who worked in No. 6 Central as to what effect the Bache-Denman Company's working open shop would have on the Central mines?

Mr. Warrum: The defendants object to the question because it is leading and suggests the answer desired of the witness, and calls for a conclusion and summary on the part of the witness of a conversation that he overheard.

The Court: It is quite leading and suggestive.

Mr. Drinker: I have to suggest the subject of the conversation or we would be here a month.

1213 The Court: I know, but whether anything was said on a certain subject might be all right, but as to what the import was,—

Mr. Drinker: I didn't tell him what I expected him to answer by the question. I will try to ask it again.

Q. Mr. McGee, did you ever hear any conversation by the union miners that worked at No. 6 Central?

The Court: With union miners who worked at Bache-Denman?

Mr. Drinker: No, with anybody.

Q. Did you ever hear any statement by the men that worked at No. 6 Central as to whether or not they were in favor of Bache-Denman working open shop?

A. No, sir, there was none of them in favor of open shop.

Q. Did the men who worked at No. 6 Central say why they did not want Bache-Denman to work open shop?

Mr. Warrum: The defendants renew their objection, unless the attention of the witness is called to some particular conversation, at some particular time.

Q. Do you understand the question? A. No.

(Question read by the reporter).

A. They said if they worked open shop they would all be working open shop around.

Q. Did they say why that would be?

Mr. Warrum: Same objection.

The Court: I will let him answer.

To which action and ruling of the court the defendants
1214 at the time duly excepted and still except.

The court: All of this is quite leading. What did they say? What did you hear them say if you heard them say anything? What did they say?

A. They said if they let that mine down there work open shop they would all be working open shop in a few days.

The Court: Is that all you heard them say? A. Yes, sir.

The Court: Did you hear them say anything in particular aside from that?

A. No, sir, that was the substance of it, I thought.

The Court: All right.

Mr. Drinker: All these men who talked and expressed themselves against the Bache-Denman Company working open shop, were most of those men who had worked in the Bache-Denman mine or men who worked in other mines?

A. Men who worked in other mines.

Mr. Drinker: That is all.

Mr. Warrum: No cross examination.

The Court: Stand down.

(Witness excused)

G. W. Skow, of lawful age, called as a witness on behalf of plaintiffs, being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Drinker) Just state your full name to the reporter? A. G. W. Skow.

Q. What is your business?

1215 A. Manager of the Coal District Power Company.

Q. How long have you occupied that position?

A. I think it is about seven years.

Q. Now? A. Yes, sir.

Q. What were you doing in 1914?

A. I was general manager for the Coal & Gas Belt Electric Company.

Q. At Huntington? A. Yes, sir.

Q. That company had a contract, did it, to supply the Bache-Denman Coal mines with electricity? A. Yes, sir.

Q. And the wire ran from the Huntington plant to the Bache-Denman mines? A. Yes, sir.

Q. How far was that?

A. The mines were scattered along the line; the Prairie Creek No. 4 mine is about, oh, approximately 7 miles from Huntington.

Q. And how far are the other mines?

A. The Memmoth Vein would be about 7½ to 7 and three quarters, and the Coronado would be about 3 miles, and I think that was all of them.

Q. How long had these contracts run, in 1914?

A. I think they were ten year contracts, on which service had been furnished about two years, and my recollection is that would be about eight years for them to run.

Q. Now, where was the branch from the main line,

1216 just describe the branch from the main line to No. 4 that ran off.

A. Our main transmission line followed the public highway from Midland up to Hartford, and passed the Prairie Creek school house.

Q. Was that the Union Hall of the Prairie Creek Local, or don't you know? A. I am quite sure that it was.

Q. Go ahead?

A. And the branch was tapped from this main line at the Prairie Creek School House and ran about a half mile or three eighths of a mile, almost due east to Prairie Creek Mine No. 4.

Q. That is what you call the high tension line?
A. That is this line.
Q. How many volts did it carry?
A. About seven thousand volts.
Q. Now, during the period that they had the trouble at Prairie Creek No. 4, between April and July, 1914, were you called over to No. 4 to repair breaks in the line, several times?
A. Yes, sir, we had trouble on this line a great many times, and of course we had to go out and find it.
Q. How many times would you say?
A. It would merely be a guess on my part now, but I would say ten or twelve times altogether.
Q. Did you go yourself?
A. Yes, sir, almost always I went along.
Q. Now state if you can remember what specific thing you found there at the time you were so called, what you found to be the matter?
1217 A. The nature of the trouble was either cut wires or short circuit lines.
Q. Were these troubles, — did they indicate that they could have been caused by an accident?
A. Oh, no, not by an accident, they could not have been caused by an accident.
Q. Any of them? A. I don't think so.
Q. Did you make these repairs personally?
A. Some of them I did.
Q. How many,—did you repair the chain yourself?
A. Yes, sir.
Q. And any of the cuts?
A. Yes, sir, I think one or two of the cuts.
Q. And the men under your direction made the other repairs? A. Yes, sir.
Q. You were there at the time? A. Yes, sir.
Q. And saw them do it? A. Yes, sir.
Q. Now do you remember a meeting that was called at Huntington at this time?
A. There was a mass meeting held at Huntington; it was before the destruction of the Bache-Denman mines.
Q. Do you remember how long before?
A. No, I don't; I don't remember now how long that was, but it was during the open shop period of the Bache-Denman mines.
1218 Q. Who was there and what was said? First, whom do you remember seeing there?
A. At this time I only remember of seeing Dan Hogan.
Q. Who is he?

A. He was editor of the Huntington newspaper.
Q. The Huntington Herald?
A. I think that it what it was called.
Q. There was only one paper there?
A. The Herald or Hummer.
Q. You are right, it was the Huntington Hummer.
A. And W. C. Dockerman, and a man by the name of Wilkinson.
Q. Wilkinson? A. Yes, sir.
Q. That was not the John Wilkinson that was subsequently president of District 21?
A. No, sir, this Wilkinson is a man that worked there, and lived there for a number of years, worked at the mines.
Q. He was a miner? A. Yes, sir.
Q. Was Dockerman a miner? A. Yes, sir.
Q. They worked in the union mines?
A. Dockerman I know worked for the Central Coal & Coke Company, and I don't remember where Wilkinson worked, but I think for the Central too.
Q. How many people were in Huntington at that time, about what was the population?
1219 A. About two thousand.
Q. And what business were they mainly engaged in?
A. Mining and merchandizing.
Q. What proportion of them would you say were miners?
A. I would say about at least 90 per cent.
Q. The other ten per cent. [dependent] on them for their living,—the merchants and people that sold them goods [dependent] on the miners for their living?
A. Yes, sir, I don't mean now that 90 per cent, of the entire population worked in the mines, but 90 per cent. of the men.
Q. And the other ten per cent. were merchants?
A. Merchants.
Q. The people who supplied these 90 per cent. and themselves with the goods and legal service, and whatnot?
A. Yes, sir.
Q. And religion and whatever they happened to need?
A. Yes, sir.
Q. Now tell us what happened at that meeting; who was the chairman of it, do you remember?
A. I disremember that, there was a lot of speechmaking.
Q. What was the subject of the speech.
A. Relative to the operation of non-union mines in the Arkansas field.
Q. The Bache-Denman mines?
A. Yes, sir, that was the principal subject.

Q. What was the sense of the meeting as to what was to be done?

A. It was a protest against non-union operation, and I remember distinctly my company came in for pretty
1220 strong going there on account of selling power to the Bache-Denman mines.

Q. What did they want you to do?

A. To discontinue furnishing power while they operated non-union.

Q. What was that what the meeting was called for?

A. I don't remember whether it was called for that specific purpose or not, but I had been requested very urgently to be present at the meeting.

Q. Did you, during this trouble, receive a call from any of the prairie creek miners who had been working for Bache-Denman before the mine went open shop?

A. I don't know who they were from.

Q. Who did they say they were?

A. A committee of three men called at the power plant one evening and represented themselves to be from Hartford, representing the Mine Workers Union and the object of their visit was to see our power plant employees and have them agree to strike unless we would quit furnishing power to the Bache-Denman mines.

Q. Mr. Skow, during this period of open shop operation did you hear any conversation by union miners in Huntington relative to Bache-Denman hoisting coal? Now, don't answer, — did you hear any conversation, first yes or no.

Mr. Warrum: We object to the question because the question is so framed as it calls for a yes or no answer and directs the witness to state the substance and give his opinion as to the contents of a conversation that may cover a long period of time, and is leading and suggestive and involves a conclusion on the part of the witness.

1221 The Court: You should direct his attention to certain matters, and let him state what was said.

Mr. Drinker: I will try to ask it in another way.

To which action and ruling of the court the plaintiffs at the time duly excepted and still except.

Q. Did you hear, during this period, any conversation by union miners in Huntington, relative to the open shop operation of the Bache-Denman Company, at that time?

A. That is about all that was talked about in Huntington among the miners and everybody else.

The Court: What did they say.

Q. (By Mr. Drinker) What did they say?
A. I don't remember all they said, but I remember distinctly that remarks were made on several occasions that as long, — no, as soon as they started hoisting coal the fun will begin.

Mr. Drinker: You may cross-examine.

Cross-Examination

By Mr. Warrum:
Q. You say that there were ten or twelve accidents happened to your power line?
A. That is a guess on my part.
Q. You have accidents on all your power lines, don't you?
A. Not all of them.
Q. In your former examination you stated, "I would say, half a dozen times", did you read this?
A. I read it this morning, but not carefully.
1222 Q. You think a half dozen times, or ten or twelve times?
A. I said at least a dozen times, and I think I am correct in that.
Q. You were mistaken the other time?
A. Possibly I was too conservative in my estimate.
Q. You say you have accidents on other lines?
A. No, I didn't say that.
Q. You never have accidents on your other power lines?
A. Are you asking me a question or making a statement?
Q. Oh, yes; that is my question?
A. Oh, yes; we oftentimes have accidents on power lines.

Mr. Warrum: That is all.

The Court: Stand down.

(Witness is excused).

1223 Mr. Drinker: We offer the testimony of HARRY DUNLAP, beginning on page 1518 of the record.

If your Honor please, with your permission, one of us will read the questions and another the answers. I believe it will help the jury.

The Court: All right. I think it will help along.

(Thereupon, the direct examination of the witness Harry Dunlap was read, Mr. Hardin reading the questions and Mr. McDonough the answers, as follows:)

"Q. State your full name, Mr. Dunlap?
A. Harry Dunlap.
Q. Where do you live? A. Clarksville.
Q. Clarksville, Arkansas? A. Yes, sir.
Q. How long have you lived there?
A. I was born there.
Q. Born and raised there? A. Yes, sir.
Q. What are you doing now?
A. In the horse and mule business.
Q. What time, if you remember, did you go to work for the Bache-Denman Coal Company, in the spring of 1914?
A. About the 20th of April, I think it was right at the 20th of April.
Q. Do you remember one day when you and Charley Cheek were coming to Fort Smith, and that you were
1224 waiting up at Burma station, and something occurred there? A. Yes, sir.
Q. About what time was that?
A. I don't remember just what time of the day it was.
Q. Was it near the time you went to work or near the day of the big battle?
A. It was during the time I was at work.
Q. Soon after you went to work? A. Yes, sir.
Q. State what occurred at the station.
A. Charley and I went over there, and there was a crowd over there, must have been thirty or forty men, and they asked where we lived, and what we were doing there, and we told them that we were living at Fayetteville, and they told us about this trouble that they had been having trouble there, and we told them we heard about it, but didn't know anything about it.
Q. Who was in that crowd?
A. I didn't know that crowd that was there.
Q. Do you remember what was said about Langford or said by Slankard or by somebody else?
A. It was said by Slankard but it was said near the city, as we were coming in on the train from Berma, in to town.
Q. State what was said by Slankard as you were coming in from Bermur?
A. It was just as we were coming in to town, someone made the remark, I think Sandy Robinson, or Clint Burris,
— they saw Langford standing there, and Slankard
1225 said we will fix those scabs too, and they were talking about the fellows down at the bull pen, where we worked.

Q. And Sandy Robinson and Jim Slankard were on the train coming into Fort Smith?

A. Yes, sir, on the train.

Q. Now, on or about June 10th, do you remember the incident at Prairie Creek station when some bags of chops were cut? A. Yes, sir.

Q. Will you state who was present, and what happened at that time?

A. There was Jim Slankard and Sandy Robinson and Clint Burris, was about the only ones that I knew there, and that feed was being unloaded there, hay and chops and things, and this feed was put off, and after it was put off, the train I noticed it was cut all to pieces, the sacks were.

Q. Did you see any trouble between any of your co-employees and Sandy Robinson and his crowd?

A. Yes, sir. There was a crazy boy and Sandy Robinson got into it. This crazy boy drawed a gun on Sandy Robinson and told him, he said, 'If you touch me I will kill you' and Jim Slankard said, 'We will have him arrested for drawing that gun on you.' Jim Slankard was standing there, and he said, 'We will have him arrested for drawing that gun.'

Q. Do you remember one night about a week or ten days before the battle, that you and Charley Cheek were sent out to the high tension line? A. Yes, sir.

1226 Q. Will you state what happened there that night?

A. Charley and I had been sent out there to guard the wire, it had been cut before, a number of times, and we were sent out to guard the wire. There was a bunch around the post, right there, and Charley and I was down below in a little ravine, and there were two fellows come walking right down towards us, and we threw our guns on them, and got one of the fellows, and took him into camp. There were quite a bunch of them.

Q. Who did you meet at the gate of the property, if anyone? A. Mr. Langford and Mr. Chitwood.

Q. Did you meet Mr. Holt? A. Yes, sir, Jim Holt.

Q. What position did Chitwood and Holt hold, if any?

A. They were United States Marshals.

Q. What did you do with [his] man Berkell?

A. We turned him over to Mr. Chitwood and Mr. Holt.

Q. Do you know what they done with him?

A. No, I did not, I went to bed.

Q. Where were you when you encountered this man Berkell?

A. We were just right below the school house; we were up near the main road, below the school house.

Q. How many men were there up at the pole?
A. There must have been 15 or 20, maybe a few more than that.
Q. How far were you and Cheek from the pole?
A. Oh, we were 200 yards, I guess, or maybe three.
Q. How did it come that you uncovered yourself there?
A. We had a dog with us there, and this dog began
1227 barking, and those two fellows walked away from the crowd and down to us.
Q. What became of the second man?
A. He run; he shot right at us, and ran over, and Berkell stopped, the big fellow.
Q. In that crowd of men at the post, did you see one or more of them doing anything at the post?
A. They were just all congregating around this post. Of course we knew what they were there—
Q. (interrupting) You need not say what you knew or supposed. A. No.
Q. Did you ever—what was your job at No. 4?
A. Well, I was just handy man, anything they wanted me to do.
Q. You guarded? A. Yes, sir, at times.
Q. What was your post?
A. Well, I worked at different places, sometimes No. 3 and sometimes No. 4; I worked at both places.
Q. No. 3 was over between No. 4 and Frogtown?
A. Yes, sir.
Q. Did you ever go over to Frogtown and shoot the place up? A. No, sir.
Q. Did you ever know of any other guards from No. 4 going over there? A. No, sir.
Q. Do you remember that Sunday night before the battle when our guards are charged with having shot up Frogtown?
A. Yes, sir.
1228 Q. Did you hear shots over there? A. Yes, sir.
Q. Where were you guarding that night?
A. At No. 3, between No. 4 and Frogtown.
Q. You were guarding at night, at that time?
A. Yes, sir.
Q. Did you go over to Frogtown and shoot the place up that night? A. No, sir.
Q. Were you there on the day of the battle? A. Yes, sir.
Q. Will you describe what happened on July 18th?
A. Well, about some time in the morning, three or four o'clock, the lights went out; it might have been earlier than that, and there was several shots fired into the camp then, and then there was nothing more of it then until 8:30 in the

morning, when they began to shooting into the camp from all sides. I came over to No. 4 then, and they sent me back over to No. 3 to tell the guards to stay on duty, until they were relieved and when I got back to No. 3, you could see men scattered all around over there, and right shortly after that is when they began shooting into 3 and all around.

Q. Did you help get the women and children out of No. 3? A. Yes, sir.

Q. What did you do with them?

A. Took them to No. 4, the biggest part of them.

Q. About what time did you leave the mine?

A. About 12:30 or 12:00 o'clock or 12:30.

1229 Q. With whom did you leave? A. With Bud Porter.

Q. The day after the battle did you go down to the school house? A. Yes, sir.

Q. Who was there when you got there?

A. Well, old man Howard was there, he is the only one I would recognize. There were 75 or maybe more, 60 or 75 men there.

Q. Do you know his name?

A. No, I don't. It was old man Howard, he lived up above the mine.

Q. Was it John Howard?

A. I think it was John Howard; he lived up above the mines.

Q. Who was with you?

A. Mr. Love, and Mr. Bailey, and my brother, they were all from home over there.

Q. What did you say to this crowd in which old man Howard was?

A. Well, Mr. Love told old man Howard, he said, 'I understand there were two boys killed over here, and we come after them', and old man Howard said no, there had been no trouble there that he knowed of, and we went back up the ravine, but not quite as far as those boys were killed.

Q. Going back for a minute, do you remember sometime before the battle when there was a shot hit Will Bohannan and Riley Bailey? A. Yes, sir, I was right there.

Q. State how that happened.

A. We had all gotten our statements, and Will Bohannon and Riley Bailey were standing there together looking

1230 at their statement, and the gun was standing down on the step, and I was right there looking over their shoulders, and the gun slipped down, and hit on the step and went off and hit Will Bohannon and went through and broke Riley Bailey's arm.

Q. Was there any fight between Bohannon and Bailey?
A. No, sir.
Q. Do you know whether Pete Stewart and Paul Little came down there one day? A. Yes, sir.
Q. Were they investigating that shooting? A. Yes, sir.
Q. And did you hear them talking about it?
A. Yes, sir, I was right there in the crowd.
Q. What did they say?
A. They were talking like Will Bohannon and Riley Bailey had a fight there.
Q. The day after the battle, did you come in here to Fort Smith? A. Yes, sir.
Q. State what, if anything, occurred when you were walking on the streets with Clarence Shaleen and John Shaleen.
A. We were walking down the street and passed John Monick and another fellow, that I didn't know, and we walked on into the lobby of the Main Hotel, and we were standing there talking, and in a few minutes an officer and John Monick came in, and he said, 'This is the fellow right here', and this officer arrested me. I asked him what he arrested me for, and he said for cursing John Monick, and I offered to make bond right there, but they wouldn't let me, and
1231 they took me around to jail, and John Shaleen got there and made a bond for me to appear the next Monday morning.
Q. Had you cursed John Monick? A. No, sir.
Q. Do you know who Paul Little was, the man that came down there with Pete Stewart?
A. He was county prosecuting attorney here at the time."

(The cross examination was read as follows, Mr. Warrum reading the questions and Mr. Grant the answers:)

"Q. He is the circuit judge here now, is he?
A. I don't know whether he is or not.
Q. When did you first go to Prairie Creek?
A. About the 20th of April.
Q. About the 20th of April? A. Yes, sir.
Q. What particular part did you play in the operation of the mines, what did you do?
A. Anything they wanted me to do.
Q. You say you were handy man around there?
A. Anything they wanted me to do.
Q. Did you carry a gun with you?
A. I did when I was on guard duty.
Q. You carried one when you were not on guard duty, too, did you? A. No, sir, I did not.
Q. Did you have more than one gun with you?

A. No, sir.

1232 Q. Did you have a Winchester and a six-shooter?

A. I had a Winchester, I didn't have no six-shooter.

Q. About how long after you landed in Prairie Creek was it that you arrested Berkell, you and Charley Cheek?

A. I had been there some time, I don't remember how long.

Q. You say that two other fellows were there that night?

A. With Berkell?

Q. Yes.

A. There was more than that, 20 or 25 fellows, there was a big bunch.

Q. How close did you get to them?

A. Oh, we were 200 yards from them.

Q. How far was Berkell away from the crowd?

A. He walked away from the crowd and walked right up to us.

Q. He walked away from the crowd and walked right up to you? A. Yes, sir.

Q. And you were standing out where he could see you?

A. No, sir, we were not.

Q. You were hid? A. Yes, sir.

Q. He didn't know you were there? A. No, sir.

Q. And you arrested him?

A. We took charge of him.

Q. You threw your gun on him? A. Yes, sir.

Q. He was walking along the public road when you

1233 did it? A. No, sir.

Q. Where was he?

A. He was right down this ravine, where I told you, off of the public road.

Q. Now, there is a broad place there in front of that school house? A. Yes, sir.

Q. Extending away out? A. Yes, sir.

Q. Was he not walking in the light, along that little ravine, and he was right there when you took him into custody?

A. No, sir, he was down in this ditch.

Q. And how far off of the public road?

A. As far as to the back of the house.

Q. As far as to the back of the house? A. Yes, sir.

Q. How far did he get to you before you threw your gun on him? A. About as far as from me to you.

Q. About as far from me to you? A. Yes, sir.

Q. Was he armed? A. No, sir.

Q. What did you tell him? A. To put his hands up.

Q. He did so? A. Yes, sir.

Q. Did you tell him what you were arresting him for?
1234 A. I just told him that we were watching that pole to keep them from cutting that wire that night and cutting the current off.

Q. He was not up about your pole, was he?

A. Yes, sir, he was right at it when we started down where we were.

Q. How far away? A. How far away from the pole?

Q. Yes. A. He was right under the pole.

Q. That pole stands over in the corner of the field, don't it, now? Way over in the corner of the field, way to the right?

A. No, it stands right up close, to the road, right at the fence.

Q. The fence is how far off the road?

A. I don't know, just a few steps, just a little piece off the road.

Q. He was not over the fence?

A. No, sir, he was on the outside where the pole was.

Q. He was on the outside and you arrested him outside the fence on the public road? A. No, sir.

Q. Now where was the other two men with Berkell, that shot and ran off?

A. All of those 15 or 20 men ran back around the school house when they heard our hollering halt they ran around the school house that way.

Q. The two did? A. All of them did.
1235 Q. I am asking about the two.

A. There was one with Berkell and he run the other way, down in front of the school house.

Q. The man with Berkell? A. Yes, sir.

Q. The man with Berkell was the one that fired that shot at you? A. Yes, sir.

Q. How many shots did he fire? A. One time.

Q. Did he come pretty close to you?

A. I think so; he hit a tree right by us, and the tree was close to us.

Q. Went right between you and Cheek? A. Yes, sir.

Q. And hit a tree? A. Yes, sir.

Q. How big a tree was it? A. A small tree.

Q. And he ran off? A. Yes, sir, this boy ran off.

Q. Berkell did not? A. No, sir.

Q. He made no effort to run? A. Yes, sir.

Q. Did you ask him where he was going, this man Berkell?

A. Yes, sir.

Q. And what did he tell you?
1236 A. I think he said that he had been to see his girl, or something.
Q. And was going home to his mother? A. Yes, sir.
Q. And he asked you to turn him loose so that he could proceed on his journey? A. Yes, sir.
Q. And you refused to do it? A. Yes, sir.
Q. And you carried him into camp? A. Yes, sir.
Q. And Charley Cheek guarded him all night?
A. I think Mr. Chitwood and Holt took charge of him."

Mr. Warrum: We will waive the rest of the cross examination.

Mr. Drinker: We will not at this time read the part of the cross examination omitted, but will reserve the right to read it later if it should become necessary in rebuttal.

1237 Mr. Lucas: We will read the testimony of JOHN W. BAKER, beginning on page 1423 of the record. A Subpoena was issued for Mr. Baker, but was returned yesterday not served, as he is without the jurisdiction of the court.

(The direct examination was read as follows, Mr. Lucas reading the questions and Mr. Hardin the answers:)

"Q. State your name? A. John W. Baker.
Q. Where do you live? A. Poteau, Oklahoma.
Q. Were you living at Midland or near Midland in 1914?
A. No, sir, I was living at Poteau, but I was down at Midland.
Q. Were you down at Midland on May 18th, 1914?
A. Yes.
Q. Describe what you saw in front of Buck Tharel's store?
A. I seen the company wagon come up to the depot and get a stove and a box of bread.
Q. By "the company's wagon," you mean the Bache-Denman wagon? A. Yes.
Q. Who was on that wagon?
A. Bill bohannan, and a couple of more fellows. I disremember now just who they were, and they come up there and got a stove and a box of bread, and some of the boys said, "Let us rock them scabs."
Q. Who were the boys that said that?
1238 A. They were around the corner of Buck Tharel's store.
Q. Did you recognize any in that crowd? A. Yes.
Q. Who were they? A. Moro Colo and Foster Bean.

Q. Do you know where they worked?
A. I think for Prairie Creek, I don't remember for sure.
Q. Do you know whether they were union or non-union men? A. They were union men.
Q. What did they do?
A. They commenced throwing rocks at them.
Q. Who did you see? A. Moro Colo and Foster Bean.
Q. Now, after the wagon had gone some distance, what happened?
A. Well, they stopped filled the box and Bohannan got out with his gun.
Q. What did he do with his gun?
A. Nothing at all.
Q. Did he point it at anybody? A. No.
Q What happened then?
A. The officers came down and arrested them.
Q. Do you know who the officers were?
A. I know their faces, but I don't know their names."

Mr. Warrum: We waive the cross-examination.

1239 Mr. Drinker: We offer, on page 2381, from Plaintiffs' Exhibit 175, so much of page 166 as shows that Moro Colo was admitted to Local 1565 on November 4, 1913.

We offer, from the same exhibit, page 2379, so much of page 82 as shows that Foster Bean was admitted to Local 1565 on January 13, 1914.

Mr. Lucas: We will read a part of the cross examination of Mr. Baker.

Mr. Warrum: This witness has been excused. We waived cross-examination, and they have introduced an exhibit since that.

Mr. Lucas: The defendants waived the cross examination of Mr. Baker, as contained in his previous testimony. Mr. Drinker has now identified the men he spoke of, and we desire to read a part of his cross examination.

Mr. Warrum: No objections.

(Cross examination read by Mr. Lucas and Mr. Hardin as follows:)

"Q. You lived in Poteau then? A. Yes, sir.
Q. And you just casually were in Midland on that occasion, were you? A. I just went down there on a visit.
Q. On a visit? A. Yes, sir.
1240 Q. Are you a married man? A. Yes, sir.
Q. Who is father-in-law? A. Syllsbury.

Q. The Syllsbury who testified day before yesterday?
A. Yes, sir.
Q. This was in front of Tharel's store you saw this occurrence? A. Yes.
Q. Had you seen the guards in there on the company wagons these men were in? A. No, sir.
Q. How many men were in the wagon? A. Three.
Q. Did all three have guns? A. I didn't see but one gun.
Q. Who had that? A. Bill Bohannan.
Q. Had there been anything said between the men in the company wagon and the boys on the street before the boys said, "Let's rock those scabs"? A. No, sir.
Q. Nothing at all was said? A. No.
Q. Do you know whether any of them were struck with rocks? A. No, sir, I don't think there were.
Q. How far away was the wagon from the boys?
A. Between 50 and 100 yards.
1241 Q. Then Bohannan got out of the wagon?
A. Yes, they all three got out of the wagon.
Q. Was he the only one that had a gun when they got out of the wagon? A. Yes, sir.
Q. Did they arrest all three of them? A. Yes.

Mr. Warrum: That is all.

1242 Mr. Drinker: We offer to read the previous testimony of J. O. JOHNSON, page 1498 of the record.

(Direct examination read by Mr. Lucas and Mr. Hardin as follows:)

"Q. Your name is J. O. Johnson? A. Yes, sir.
Q. Where do you live now? A. Hutchinson, Kansas.
Q. What business are you engaged in?
A. I am working at a salt plant, as fireman.
Q. How long have you lived in Hutchinson, Kansas?
A. Since the 16th day of August, 1916.
Q. State whether or not you came to Fort Smith at the request of the plaintiffs in this case at this time? A. I did.
Q. Do you know how far it is from Hutchinson, Kansas, to Fort Smith, Arkansas? Do you know about how far?
A. The nearest I could get, the mileage was 373 miles,—the two roads gave me the same mileage, the Midland Valley and the Frisco.
Q. State whether or not you ever lived in Arkansas?
A. I did.
Q. Did you ever live temporarily or otherwise in Fort Smith, Arkansas? A. Yes, sir.

Q. How long did you live in Fort Smith, and when?
A. I lived here a little more than twelve years, from
1243 the first of April, 1902, until 1914.
Q. Did you hold any official position in the year 1914, in Arkansas? A. Yes, sir.
Q. State what that was.
A. Deputy United States Marshall.
Q. Who was the United States Marshall at that time?
A. J. F. Mayes.
Q. State whether or not J. F. Mayes, the Marshal sent you to the neighborhood of the Bache-Denman mines of Hartford in this county, to make any investigation with reference to the mining troubles? A. Yes, sir.
Q. Where did you go?
A. I went to nearly all stations on the Midland Valley Railroad, down there and the Frisco. The line from Jensen to Mansfield, Midland, Greenwood, Prairie Creek, Hartford, Arkole, Huntington, and there is another little station, I forget, between Greenwood and Midland on the Midland Valley.
Q. Excelsior?
A. I am not sure if that's the name. The first station out of Greenwood, going toward Greenwood.
Q. How much time did you occupy in making your trips around over that country?
A. Well, I made different trips,—sometimes I was there a day and night, and some times a part of one day, or part of one night. Put in different hours on the trips, just
1244 owing to what I satisfied myself, what I could do on that trip.
Q. Could you give an estimate, Mr. Johnson, of about how many trips you made, and about how often they were made? A. Well, not very accurate,—I could not.
Q. About over how much time did all the trips extend, naming the months, if you can.
A. Well, perhaps a month.
Q. Did you make any trips there in the month of May, 1914?
A. Yes, sir. As well as I remember the most of the trips was made while I was on this work, working under cover.
Q. What do you mean by working under cover?
A. Let no one know what you was up to, who employed you.
Q. State whether or not you were acting under the instructions of the United States Marshal for the purpose of finding out what the situation was down there? A. I was.

Q. Was it or was it not for that reason that you were working under cover, that people would not know the object of your investigation? A. That was the reason.

Q. During the latter part of May, state whether or not you met P. R. Stewart, the President of the United Mine Workers at that time, on a train? A. I did.

Q. State whether or not you had any conversation with him about the injunction that had been granted in the Coronado case and others, that is in the coal companies
1245 there, the Bache-Denman companies against any interference with their mines?

A. I had a talk with him, yes, sir.

Q. As near as you can, Mr. Johnson, I wish you would give that, speaking loud so the stenographer can get your statements.

A. I don't remember just how the conversation began. He come to me on the train at Greenwood, just as the train was pulling out going toward Hartford, and sat down and began talking with me, and asked me where I was from. I told him I was from Washington County, this state. I told him I was born and raised on the farm. He said something about the trouble down there, and I said I noticed in the papers that the court had granted an injunction against you fellows down there. He says '[Dam] the injunction.' He says 'The National Government is against us, but the people are with us, and we are going to win.' I says, the company is going to operate their mines with non-union labor, ain't they? No, he says, We do not aim to let them do it. I said, How would he prevent it. I meant by that, the people, the union.

Q. What was his reply, as near as you can give it?

A. He says, 'We have got a way; we are not going to let them dig coal,—the scabs.' He would not tell me the way. All his talk was in the way to refuse non-union laborers, and he brought up that subject about the two farmer girls that had been insulted there by the non-union men, as they passed the camps on the public road. The girls were going from school, and these non-union men insulted them, as they were walking along the public road. That is the sum and substance of it.

1246 Q. Did he give you the names of the girls?

A. If he did, I have forgotten. I remember asking him if he knew who they were, and he said yes. I remember that, but whether he told me the names of the girls, I do not remember, but I don't believe he did.

Q. Were there any other non-union miners to your knowledge, in that community, except those that were working at the Bache-Denman mines? A. I don't know.

Q. Did Mr. Stewart at that time say anything to you about being President of the United Mine Workers?

A. He told me he was.

Q. In all that conversation, what was his attitude toward scab labor or non-union labor? A. Very bitter.

Q. Did he in that conversation make any further reference to the court or the injunction other than what you have already said, in which he said 'Damn the injunction'? Did he make any further statement than that?

A. That's all I remember.

Q. Mr. Johnson, on that same day, state whether or not you heard a conversation between some union men at Midland? A. I did.

Q. I wish you would state what that was.

A. There were three different men at the Frisco depot at Midland, leaning against trucks that was used to haul baggage to put on the train and off of it, and it was a real
1247 dark night, after dark, perhaps 8 o'clock or after, and I took myself up on the other side of the trucks and leaned against them and listened, and the subject was being discussed between the three men."

Mr. Lucas: Turn to page 1514, the first question.

Mr. Warrum: That was excluded before, and we object to it.

Mr. Drinker: It was excluded before on the ground that we had not laid the foundation by showing who these men were. The witness said everybody in Midland was either union miners or sympathizers. The answer to the question shows who they were.

The Court: Proceed. Objection overruled.

To which ruling and action of the court the defendants at the time duly excepted and still except.

"Q. What subject?

A. The working of the mine No. 4 with scab labor. And the first remark I heard was 'that company is a damned fool for undertaking to work that mine with scab labor', and another one of them said 'we have got them out now, and we are going to keep them out, and if we have to fight we will fight. It may cost blood and a few lives, but we will give it as free as we drink water'. The train run in then, and I got on the train and went home."

Mr. Lucas: Now, return to 1501. (Reading):

"Q. During the trips that you made down there, during that time, did you talk with union men a great deal?

A. Yes, sir.

Q. What was the attitude or bearing of those union
1248 men with reference to whether or not these Bache-Denman companies would be permitted to work their mine with non-union labor?

A. They would not; that was the expression everywhere. They was not going to allow them to work their mines with non-union labor.

Q. On the train during one of your trips state whether or not you witnessed some trouble between union men and non-union men. A. I did.

Q. Who began that trouble? A. The union men.

Q. State what the trouble was.

A. The union men wanted to know [if] the non-union men where they were going. The trouble was that they did not want the non-union men to go down there, and work at that mine. That's what the trouble was about.

Q. Did they come to blows? A. No, but very near it.

Q. Did anybody interfere to prevent trouble?

A. Yes, sir, I did.

Q. Anyone assist you in keeping down the trouble?

A. No, sir.

Q. Do you know the names of the union men or any of them?

A. I learned the name of one of them afterwards. I did not know at that time. It was just a short while after that, a few minutes after that, I learned the spokesman of the crowd of union men.

1249 Q. What was his name? A. Stanfield.

Q. Do you know the names of any of the non-union men? A. Not at that time.

Q. Did you learn them afterwards?

A. Some of them, yes, sir, perhaps all of them, but I do not remember all of them.

Q. Do you remember any of them now?

A. I remember one Herman Tipton.

Q. Do you know the first name of Stanfield?

A. I cannot call it now, but I did.

Q. Was it Marvin? A. Yes, sir.

Q. Do you at the present time hold any commission from the United States Government? A. Yes, sir.

Q. What commission do you hold?

A. I hold commission as a deputy special officer of the Department of Interior.

Q. Have you your commission with you?

A. Yes, sir. (Exhibits commission to counsel.)

Q. Did you hold a commission similar to that in 1914?

A. Yes, sir.

Q. State whether or not it has been renewed from time to time from that day to this?

A. Nearly yes. They are only issued every twelve months.

Q. In your response to Mr. Stewart, you first told him that you lived in Washington County, Arkansas, at that time?

1250 A. No, prior to that time. Yes, sir, I said I was born and raised there, never lived anywhere else, except here.

Q. Is that what you told him, that you were born and raised on a farm? A. Yes, in Washington County.

Q. And that was a fact that you were born and raised on a farm in Washington County, Arkansas?

A. Yes, sir.

Q. What is your age now, Mr. Johnson?

A. 58 years old."

(Cross examination read by Mr. Warrum and Mr. Grant, as follows):

"Q. When did you leave Sebastian County, Arkansas?

A. When did I leave here?

Q. Yes. A. I left here in February, 1914.

Q. Where were you living in Fort Smith from the time you ceased to be a deputy United States Marshall until you left here, in Ft. Smith?

A. Where did I live? I was boarding, first at one place and then another; north seventh street, north eighth street, three different places.

Q. Are you a man of family?

A. Yes, sir, have children?

Q. Have you a wife? (No answer.)

Q. Were your children with you during the period of

1250 time I have just asked about? A. No, sir.

Q. Where are they now? A. I could not tell you.

Q. When you left Fort Smith in February, 1914, I believe you say, where did you go to?

A. I first went to New Mexico.

Q. What did you do there? A. Nothing.

Q. Who did you go with? A. Went alone.

Q. Where did you stop in New Mexico?

A. Albuquerque.
Q. How long did you remain there?
A. Three or four days.
Q. What did you do while there? A. Nothing, I told you.
Q. Where did you go from there? A. Colorado.
Q. What part of Colorado?
A. Colorado Springs, Pueblo.
Q. When you went to Colorado Springs—was that the first place you went to after you left Albuquerque?
A. Yes, sir.
Q. What time did you get there? A. I don't remember.
Q. How long did you stay there?
A. I don't know, perhaps a week.
1252 Q. What did you do there? A. Nothing.
Q. Were you seeking employment at Albuquerque, or in Colorado?
A. I was looking around seeing what I could find that would suit me.
Q. Where did you go from that place? From Colorado Springs? A. I stopped there after I left Albuquerque.
Q. You left there, didn't you? You are not there now. Where did you go after you left Colorado Springs?
A. I went to Pueblo.
Q. When did you get to Pueblo?
A. I can't give you the date.
Q. In February or March, 1914?
A. I do not know whether it was February or March.
Q. Was it in one of those two months? A. Yes, sir.
Q. How long did you stay there? A. About a month.
Q. What did you do while there? A. Nothing.
Q. Did you board there? A. I did.
Q. With whom?
A. I cannot tell you the family name now. I boarded at a private house.
Q. Don't know the name? A. No, sir.
1253 Q. Do you know what street it was on, the number of the house?
A. I think it was in the five hundred block on Broadway, I think it was.
Q. Man or woman run the boarding house?
A. A man and his wife. I suppose they both ran it.
Q. Do you know their names, do you? A. No, sir.
Q. When you left there, where did you go?
A. Western Kansas.
Q. What part of western Kansas?
A. Hodgeman County.
Q. When did you get there?

A. I don't know. I was quite a ways—had quite a time getting there."

Mr. Warrum: We will omit the rest of the cross examination.

Mr. Lucas: Plaintiffs will read the balance of the cross examination, beginning on page 1502. (Reading):

"Q. What were you doing in Fort Smith from April, 1902, to 1914? What were you doing here?

A. I began working at the United States jail at the guards on the 22nd day of April, 1902, and worked until September, 1902, and then took the position as turnkey.

Q. How long did you hold that position?

A. Well, I cannot tell exactly. That was under Marshal Stall, and when he went out of office, I took the position as jailer.

Q. United States jail? A. Yes, sir.

1254 Q. How long did you hold that position?

A. I held it as long as it was a prison.

Q. When did it cease to be a prison?

A. I do not remember the year, the 15th of July, but I forget the year. 12 or 13.

Q. Was it one of those years, 1912 or 13?

A. I am not sure, but I think it was.

Q. Have you any data by which you could refresh your memory? A. I have not.

Q. What did you do after that?

A. I was appointed Deputy United States Marshal.

Q. By Frank Mayes? A. Yes, sir.

Q. When were you appointed Deputy United States Marshal by him? A. In September, I think.

Q. What year?

A. After the prison ceased to be a prison, the same year.

Q. Then how long did you hold that position?

A. I held it as long as Mayes was in office.

Q. When he went out of office, you went out with him?

A. Yes, sir.

Q. Who was it sent you out as a detective to gather up the information that you have told Mr. McDonough about in your direct examination? The United States Marshal?

A. Frank Mayes, yes.

Q. What did he tell you to find out for him?

A. He wanted me to learn conditions as they existed

1255 up there, as far as I could, between the union miners and the non-union miners.

Q. Were you a member of the union? A. No, sir.

Q. Are you a coal miner? A. No, sir.
Q. Do you know anything about any of the unions?
A. Only what I learned down there.
Q. Do you know who any of the members of the United Miners are in that district? A. Yes, sir.
Q. Who are they? You have been sitting here swearing about what you know about members of the Union, and I want you to tell me what you know about them. Who are some of the members of the United Mine Workers of America?
A. I only know from what they told me.
Q. You could not swear; then you must admit that those persons whom you have just testified as being members of the miners union are not members so far as you personally know? A. No, sir.
Q. They said they were members? A. Yes, sir.
Q. Members of what? A. Miners Union.
Q. What miners union? A. Coal miners.
Q. What coal miners? There are a whole lot of unions.
A. I don't know.
1256 Q. You do not know what they were members of?
A. No, sir.
Q. You do not know whether they were members of the United Mine Workers of America? Do you know?
A. I told you no.
Q. You do not know whether they were members of the United Mine Workers of America. Do you know whether they were members of United Mine Workers of America, District No. 21? A. They said they were.
Q. No. 21? A. Yes, sir.
Q. United Mine Workers of America, District No. 21?
A. Yes, sir.
Q. That is all you know about it? A. Yes, sir.
Q. You do not know the names of any of the members, do you?
A. Yes, Clint Burris, I can name some of them.
Q. What did Clint say he was a member of?
A. Coal miners union.
Q. Did he say what union? A. Coal miners.
Q. Did he say a member of the United Mine Workers of America, District No. 21?
A. I know that it was No. 21.
Q. Did he say that he was a member of the United Mine Workers of America, District No. 21?
1257 A. He said he was a member of District 21.
Q. What was it he said, state it so she can get it down.
A. You have asked me so many questions—

Q. You have not answered any, in my opinion.
A. No, he did not tell me that.
Q. Did any member any person down there tell you or anyone, he was a member of District No. 21, United Mine Workers of America?
A. They did not use the words United Mine Workers of America, District No. 21. If they did I have forgotten.
Q. Then you would not undertake to say here under oath, as a witness that any person that you referred to as a member of the Miners Union was a member of the United Mine Workers of America, District No. 21, to your own personal knowledge, would you?
A. No, sir, not using that very sentence.
Q. And as I understand you, you would not swear upon your oath that any man you referred to as being down there at the time you say these things happened, was a member of the United Mine Workers of America, would you?
A. No, sir."
"Q. What was the matter that it took you so long to get there? A. Well, now, I want to ask a question.
Q. I want you to answer my questions. Why did it take you so long to get there?
A. Is it any reason why that anybody should know anything about my private business.
Q. You are a witness, and I want you to answer my questions. A. Simply because I could not go fast.
1258 Q. What was the matter? A. I could not ride.
Q. What were you going to that place for?
A. I was hunting employment.
Q. What kind of employment?
A. Anything I could get to do to make an honest living.
Q. Who did you stop with in that county?
A. Do you want to know the name of every person I stopped with?
Q. If you can give it. A. I cannot do it.
Q. Name some of them? A. One Ross Whitman.
Q. Near what town?
A. About fifteen miles northwest of Jetmore,—the closest town.
Q. What was his business?
A. He was a farmer.
Q. Did you get employment with him? A. Yes, sir.
Q. For how long? A. Twelve or fifteen days.
Q. What did you do? A. Worked in the wheat harvest.
Q. When you left his place where did you go?
A. I worked on a threshing machine.
Q. Where? A. Around about there.

Q. How long?
1259 A. Until about the 15th of September.
Q. Then where did you go? A. I came to Arkansas.
Q. What part of Arkansas? A. Washington County.
Q. What part of Washington County?
A. Well, about, it was close to the southern part.
Q. What did you do there? A. I lived with my sister.
Q. For how long? A. Until last June.
Q. Then where did you go? A. I went to Kansas.
Q. What part of Kansas? A. Great Bend.
Q. What did you do there?
A. Helped with a thrashing machine.
Q. Whose? A. Peter Pfister.
Q. How long did you stay there with him?
A. Until the 11th or 12th of August this year.
Q. What did you do during that time?
[—]
Q. You left there when? Left Pfister's when?
A. 12th of August, 1917,—no, 1916.
Q. Who was the first person you met to talk with about this case, after you arrived in Fort Smith?
A. Mr. Bache and Mr. Finley.
1260 Q. Where, at their office? A. Yes, sir.
Q. What time today did you have that conversation with them? A. About 10 o'clock, I guess.
Q. How happened you to come here?
A. At their request.
Q. Did they request you in writing? A. Yes, sir.
Q. What became of the letter? A. I tore it up.
Q. What was in it?
A. They requested me to come as a witness in this case.
Q. Who is paying you to come here?
A. No one said they would pay me.
Q. Are you expecting pay? A. I certainly do.
Q. What do you expect? A. What the law allows me.
Q. Did they tell you that? A. No, sir.
Q. You expect pay for your time? A. Yes, sir.
Q. How much do you expect for your time?
A. What the law allows me."
"Q. Where did you go from there?
A. Hutchinson, Kansas.
Q. What time did you get there? A. The same day.
1261 Q. What did you then do? Did you go to work immediately, at the same employment you are now engaged at? A. On the 16th of August.
Q. And you have worked as fireman at that salt plant ever since? A. Yes, but not as fireman all the time.

Q. Have you worked continuously, up to this time?
A. Yes, sir.
Q. When did you leave there to come to Arkansas?
A. Thursday evening at 4 o'clock.
Q. When did you get here? A. 10.30 last night.
Q. When did you get to Mr. McDonough's office today?
A. About two or three minutes before you came in."
"Q. Is that what you expect for your time? Do you expect what the law allows you for your time? A. Yes, sir.
Q. Have you investigated, through Mr. Hull or anyone else, what the laws allow you?
A. I have not said a word about it.
Q. Now, then, you have been holding this commission to help locate violators of the liquor laws in Oklahoma. Is that the object of that commission? A. Yes, sir.
Q. How long have you been holding it?
A. I don't remember the year of the first one.
Q. With all this rambling you have been doing since
1262 February, 1914, have you worked any on that job, trying to suppress liquor in Oklahoma? A. No, sir.
Q. How happened you to get that appointment to try to suppress liquor if you were not working on that job?
A. I cannot tell why; they just sent me the commission. At the expiration of one, a new one came.
Q. You say those commissions last for a year?
A. Yes, sir.
Q. Where were you when you received this last one?
A. I was at Great Bend, Kansas.
Q. And they sent it to you by mail, without your requesting it? A. Yes, sir.
Q. How did the government know where you were?
A. They sent it to Fort Smith, and it was forwarded to me.
Q. Oh, it was forwarded to you from Fort Smith?
A. Yes, sir.

Redirect Examination

Q. Mr. Johnson, in making your statement as to the time you left here, Fort Smith, you said it was in 1914. I want to ask you whether you meant February, 1914, or February, 1915. To refresh your memory, I call your attention to the fact that you testified about making these trips down here in May, 1914.
A. Yes, yes, I left here, it was in 1915 when I left here, because this work was done in 1914.

Q. Do you remember the time of the great trouble down there in February, 1914? A. Yes, sir.

1263 Q. Then it was after that, the February following that that you left? A. Yes, sir.

Q. It would be February, 1915? A. Yes, sir."

"Q. Mr. Johnson, when you were testifying in your examination on the 24th day of March, 1917, you testified something about someone talking to you at Mine No. 4 with reference to digging coal with scab labor, and that they said they did not aim to let them do that. Do you remember that testimony?

A. I did not say it was at Mine No. 4. The conversation taken place at the Frisco depot.

Q. Who was it made that statement? A. I don't know.

Q. He asked you, I believe you said, if you were a miner and you told him no?

A. No, that bunch of men had nothing to say to me whatever.

Q. Who was it asked you if you were a miner, and you told him no? A. Some boy, I don't know his name.

Q. You don't know his name? A. No, sir.

Q. He asked you if you were a scab? A. Yes, sir.

Q. You asked him what he meant by scab? A. Yes, sir.

Q. He said a man that did not belong to the union?

1264 A. Yes, sir.

Q. You don't know who that man was?

A. That boy?

Q. Yes. A. No.

Q. He was one of the persons you were testifying about the other day when you gave your deposition? A. Yes, sir.

Q. How long after you had the conversation with the boy was it before you overheard the conversation between some parties at the Frisco depot, at Midland, about which you testified on the 24th of this month?

A. I don't know whether it was before or after that I cannot say.

Q. How many men were in that conversation? A. Three.

Q. Do you know who they were? A. No, sir.

Q. You do not know? A. No, sir.

Q. I believe you testified the other day those three men were union men? A. They said they were.

Q. That is all you know about their being union men, is what they said? A. Yes, sir.

1265 Q. You don't know their names? A. No, sir.

Q. You don't know what union they belonged to, if they were union men? A. No, sir.

Q. I believe you testified the other day that you knew Clint Burris? A. I did.

Q. Did you testify the other day that you knew any of the balance of those persons down there?

A. Yes, sir, John Manick.

Q. Who else did you testify that you knew besides Clint Burris?

A. I did not testify that I knew anybody else the other day. You did not ask me.

Q. You did not testify anything about John Manick, either on questions asked you by Mr. McDonough or on questions asked by me? A. I don't remember.

Q. Did you say you had a talk with Clint Burris?

A. I had numerous talks with him.

Q. Did you testify the other day on Mr. McDonough's questions about what Clint Burris said?

A. I don't believe I did. I am not sure.

Q. You did say the other day what you heard them say? The men you took to be miners—you were under the impression they were hostile to the non-union men? A. Yes, sir.

Q. Now, then, in making that statement, did you take
1266 into account what Clint Burris had said to you?

A. Yes, sir.

Q. Now you testified in the case of United States vs. Peter Stewart, et al, that Thursday, July 2nd, 1914, in the United States Court room in the City of Fort Smith before Judge Frank Youmans, did you?

A. I testified. I do not remember the day or month.

Q. It was in that trial? A. Yes, sir.

Q. About that time of the year? A. Yes, sir.

Q. Do you remember making this statement: 'Well, I talked with Clint Burris and John Manick several times down there, a time or two, but there was no threat made at all.' Do you remember giving that statement? A. I do.

Q. Is that true, you made that statement? A. Yes, sir.

Q. And did you further state that they said they would rather they would not work there, they did not say that they should not? Do you remember making that statement in your testimony? A. I don't remember just all my statements.

Q. That is substantially correct, is it? A. Yes, sir.

Q. You further stated that Clint Burris said that he had some friends over there he would like to talk to, and
1267 show them they were doing wrong. Do you remember that statement, and is that statement substantially correct? A. Yes, sir.

Q. And it is true? A. Yes, sir.

Q. Do you remember the question asked you, 'Did Sandy Robinson say anything about it?' You answered 'No.' Do you remember that question and answer? A. No, sir.

Q. If that question was asked you and you answered no, that is correct, is it? A. Yes, sir.

Q. And you say the same thing now?

A. If I said it then, I say it now.

Q. I am asking you if you say it now? A. About what?

Q. I will read you the whole answer you made before. 'Well, I talked with Clint Burris and John Manick several times down there, a time or two, but there was no threat made at all. They said they would rather they would not work there. They did not say they should not. Clint Burris said that he had some friends over there he would like to talk to to show them they were wrong. That is about the statement that was made to me.' Did Sandy Robinson say anything about it? A. No.' You say that now?

A. Yes, sir.

Q. Do you remember the question being asked you what did Manick say, if anything? Your answer was 'About on the same line that Burris was talking.' That is what
1268 you say now? A. Yes, sir.

Q. Do you remember that question? 'While you were there, or going to and from there, state whether or not at any time you saw any difficulty between the employees of this company that were working there on the open shop, and the union miners.' You answered, 'I did not see any trouble that amounted to anything at all.' Do you remember that statement and do you say the same thing now? A. Yes, sir.

Q. Now, Saturday you testified with reference to some trouble that occurred on a train, you spoke about union miners being in trouble on the train. Do you know the names of those persons?

A. I did not then, and never did learn the names of any but one of them.

Q. Whose name? A. Marvin Stanfield.

Q. Now, then, do you know what miners union they belonged to? A. No, sir.

Q. And all you know about their being union miners is what you heard someone say, or what they said?

A. Yes, that's about all I know.

Q. Did Marvin Stanfield claim to be a union miner?

A. Yes, sir.

Q. But you do not know whether he was a union miner or not? A. No, sir.

Q. When did you first know that you were coming
1269 here to give your deposition in this case, Mr. Johnson?

A. I can't tell you whether it was a week before yesterday or tomorrow.

Q. Did anyone interview you or talk with you personally about this case before you came down here to testify?

A. No, sir.

Q. Did anyone write you any letters with reference to your coming here, and testifying, before you were notified?

A. I got a letter.

Q. Did Mr. Roger B. Hull call on you in Hutchinson, Kansas, or anywhere else, with reference to what you would testify? A. No, sir.

Q. He did not come and see you? A. No, sir."

1270 Mr. Lucas: We will read the testimony of Mr. David Stanley from the record of the former trial, page 1551. Mr. Stanley is within the jurisdiction of the court, but is a very old man and very ill. The doctor says he cannot come.

Mr. Drinker: Is Harry Dunlap dead? He is either dead or out of the jurisdiction of the court.

The Court: Proceed.

(Direct examination of David Stanley read by Mr. Hardin and Mr. Lucas as follows:)

"[A.] State your full name. A. David Stanley.

Q. [Qill] you make an effort, Mr. Stanley, to make yourself heard? A. I will if I can.

Q. I know you have not a very strong voice. The last juror over in the corner there has to hear everything you say and the Court behind you has to hear you. Were you working down near Mine No. 4 on July 17th, 1914? A. No, sir.

Q. Well, where were you working?

A. I was putting props and hauling to Mine No. 6.

Q. How far was that from Mine No. 4?

A. That was about—that was away over—I had to haul nearly over to Huntington.

A Juror: We can't understand you.

1271 A. (Continuing.) Pretty near over to Huntington.

Q. Were you living at No. 4?

A. I was living in Mine No. 4.

Q. In what they call No. 4 camp? A. Yes.

Q. Do you remember the morning of the big battle down there? A. Yes.

Q. Did someone come to you that morning and tell you to come away with your family? A. Yes.

Q. Who was that? A. Mr. Howard.

Q. What is his first name? A. John Howard.

Q. Do you know who he was?

A. Well, he was just a man I suppose, like any other man.

Q. He was a miner?

A. Well, I could not say he was a miner. I don't believe I ever heard of him mining any since I lived there.

Q. What did he tell you?

A. That I had better get my family away—that the woods were full of men.

Q. What did you do? What time in the morning was that?

A. That was about twixt 8:00 and 9:00 o'clock.

Q. What did you do after that?

A. Took my wife and children over to John Baskins
1272 as quick as he told me.

Q. What happened to you during that day?

A. I took them over there and then is when they began to fire the camps. I think probably they was burning the whole camps up, and I went over there to see what they were a doing, and while I was there at the house, a man by the name of Nichols came there and ordered me to open my house, that he wanted to search for guns and he took my revolver and shotgun and Winchester and said when it was over he would return them, and I have never seen them yet.

Q. Where did you go after that?

A. Why, he arrested me and told me I had to go with them, and he took me just down to the road and then he ordered another man to take me up to the schol house where these other men were.

Q. Do you remember what other men were there?

A. These boys—them two men that was shot and these boys,—the two of them that were just on the witness stand. I don't know their names. They were there and Sam Thomas.

Q. What did they do with you?

A. When they ordered me to,—when they ordered me out of the house—

Q. (Interrupting.) What house was this?

A. This little log house.

Q. Did they put you in the log cabin too?

A. Yes, we all went in there out of the rain. There came up a hard shower of rain and they told us we could go in there

out of the rain, and we all went in there, and when they told me to come out—

1273 Q. (Interrupting.)

[A]. Who told you to come out? A. Slankard.

Q. Do you know whether that was Jim Slankard, the constable? A. Wasn't it John Slankard?

Q. Give your best recollection about who that was.

A. That was the man, the constable.

Q. Slankard? A. Yes.

Q. What did he say?

A. That he was going to take them out before the Grand Jury I understood them to say.

A Juror: What did you say?

A. (Continuing.) I understood him to say they was going to take them out before a Grand Jury.

Q. Did he arrest anybody?

A. No, sir, he took them out.

Q. Oh, I see. This was just before the shooting took place? A. Yes.

Q. What did he say?

A. He said he allowed to take us all before the Grand Jury.

Q. At Hartford?

A. I don't know. The other boys rushed right out and I was siting down back in the corner like and they just run right out and I happened to be the hind one, and when the shooting began, I just stopped and stood still there.

1274 I could not think of what was going on for a little bit. And I came out and stepped back the other way a little piece and they ordered me to come on around and I just walked around there and about that time Slankard was going off back over the hill and there was a pretty good sized kind of red mustached man told him he was not going to have any more men shot, to go back over the hill, and the men with the guns went on away, and he told me to go if I wanted to, and I went on over back to John Baskins, where my wife was.

Q. How many men was in the crowd where the shooting was going on?

A. About—they was scattered around there, but I could not tell who was over by the school house, but there was about 50 where we were.

Q. Did Slankard arrest anyone for that shooting?

A. No, sir, I didn't see him after I saw him going away.

Q. They didn't get you to testify in Greenwood in the Circuit Court? A. No, sir."

And.